

**CANNISTRACI LAW FIRM**

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

GATEWAY CITY CHURCH, a  
California nonprofit corporation, THE HOME  
CHURCH. INC., a California nonprofit  
corporation, THE SPECTRUM CHURCH,  
SAN FRANCISCO BAY AREA, INC., a  
California nonprofit corporation, ORCHARD  
COMMUNITY CHURCH OF CAMPBELL,  
a California nonprofit corporation, TRINITY  
BIBLE CHURCH, a California nonprofit  
corporation,  
  
Plaintiffs,  
  
vs.  
  
GAVIN NEWSOM, in his official capacity as  
Governor of the State of California, SANDRA  
SHEWRY, M.D., in her official capacity as  
Acting Director of California Department of  
Health, SARA H. CODY, M.D., in her official  
capacity as Santa Clara County Public Health  
Officer, COUNTY OF SANTA CLARA, a  
public entity, and DOES 1-100,  
  
Defendants.

1. Religious rights have been suspended in California indefinitely during the pandemic.<sup>1</sup>  
 “[Y]our constitutional rights don’t really matter right now . . . . [W]e’re putting parts of the  
 Constitution on hold. We really are. Freedom of assembly. Right to practice religion,” so states a

<sup>1</sup> Appendix A, Disparate Treatment Chart, summary of laws that burden religious gatherings and exempt secular gatherings, incorporated herein. Appendix B, Exhibit Lists to Complaint by Number and Subject Matter.

1 Santa Clara County (SCC) Deputy District Attorney in charge of enforcing shutdown orders.<sup>2</sup>

2 2. The suspension of religious rights affects the rights of all 40 million people who live in  
3 California.<sup>3</sup> It is particularly harmful for the almost 20 million Californians to whom religion is  
4 “very important,” according to a Pew Research Center study that also reported 12.5 million  
5 Californians regularly attended weekly religious services before all places of worship were closed in  
6 the State of California by state and health department orders.<sup>4</sup>

7 3. The shutdown orders are not temporary. They have no expiration date. They are indefinite.  
8 “*This order shall remain in effect until I determine it is appropriate to modify the order based on*  
9 *public health conditions.*”<sup>5</sup> The shutdown orders have suspended constitutional rights for eight  
10 months and will continue to do so for an indeterminate period. Even assuming a vaccine is widely  
11 distributed, COVID-19 herd immunity will not likely be achieved until near the end of 2021,<sup>6</sup> or  
12 perhaps even later.

13 4. The federal Bill of Rights has been suspended indefinitely by the order of two unelected  
14 health officials who have elevated their own health orders above the United States Constitution. The  
15 health orders do not advance the stated compelling interest of curtailing the spread of a virus as they  
16 exempt secular gatherings that pose a similar or greater risk of spread, such as mass gatherings in

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18 <sup>2</sup> Rusch and Smith, *How Do You Enforce a Law That Tramples the Land of the Free?*, The New York Times, May 12, 2020. Exhibit 101 hereto incorporated herein.

19 <sup>3</sup> United States Census Bureau, *Quick Facts, Santa Clara County, California*. Exhibit 11 hereto incorporated herein.

20 <sup>4</sup> A Pew Research Center study shows 31% (about 12.5 million) of Californians attend religious services weekly; 54% (about 21.6 million) believe in God with “absolute certainty,” and for 47% (almost 19 million) religion is  
21 “very important” in their lives, according to a Pew Research Center, Religious Landscape Study, February 29, 2015. . Exhibit 92 hereto incorporated herein.

22 <sup>5</sup> Statewide Public Health Officer Order dated August 28, 2020, ¶ 6. Exhibit 25 hereto incorporated herein.

23 <sup>6</sup> Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, stated, “If you’re  
24 talking about getting back to a degree of normality ... prior to Covid, it’s going to be well into 2021, maybe even towards the end of 2021.” Watts, *Fauci Says Normal Life may not be Back Until the end of 2021*, CNN Health, September 11, 2020. Exhibit 130 hereto incorporated herein.

airports and on mass transit and as they are not enforced against protests where hundreds or thousands are present in close proximity.

5. As defendant Sarah Cody of Santa Clara County Public Health (SCCPH) has acknowledged, religious gatherings are constitutional rights that are “vital” and any risks they pose can be mitigated:

[R]eligious gatherings ... are vital to people’s social and spiritual well-being. . . . Risks associated with these activities . . . can be mitigated . . . through measures that decrease exposure, ensure adequate social distancing, and limit intermixing between households.<sup>7</sup>

6. Religious gathering can be safely conducted with simple personal conduct measures. And, unlike at airports, on mass transit, and with protests, religious gatherings are conducted by spiritual leaders who are in a unique position to ensure their congregants act safely. The national Centers for Disease Control and Prevention (CDC) has published guidance for reopening places of worship in its *Considerations for Faith Communities*.<sup>8</sup> CDC’s publication includes mitigation measures that are clear, simple and easy to follow.<sup>9</sup> CDC considerations for communities of faith recognize that human health is more than physical health. Human health includes the inner complex of the human soul which for many millions includes a profound need to worship, which is at the very heart of their existence. CDC states in pertinent part:

CDC offers the following general considerations to help communities of faith discern how best to practice their beliefs while keeping their staff and congregations safe. Millions of Americans embrace **worship as an essential part of life**. For many faith traditions, gathering together for **worship is at the heart** of what it means to be a community of faith. But as Americans are now aware, gatherings present a risk for increasing spread of COVID-19 during this Public Health Emergency. CDC offers

<sup>7</sup> County Health Order, May 18, 2020, Appendix C-2, ¶ (5). Exhibit 60 hereto incorporated herein.

<sup>8</sup> Exhibit 6 hereto incorporated herein.

<sup>9</sup> The CDC mitigation measures include promoting hygiene, encouraging wearing face masks, which is “most essential when social distancing is difficult,” intensification of cleaning, disinfecting, and ventilation, promoting social distancing, considering limiting size of gatherings, posting signs, monitoring for outbreaks, and protections that limit exposure to risk for staff and congregants at higher risk for severe illness from COVID-19, “including older adults and people of all ages with certain underlying medical conditions,” such as “remote participation in services.” *Ibid*.

1 these suggestions for faith communities to consider and accept, reject, or modify,  
 2 consistent with their own faith traditions, in the course of preparing to reconvene for  
 in-person gatherings while still working to prevent the spread of COVID-19.

3 This guidance is not intended to infringe on rights protected by the First Amendment  
 4 to the U.S. Constitution or any other federal law... The federal government may not  
 prescribe standards for interactions of faith communities in houses of worship, and in  
 5 accordance with the First Amendment, **no faith community should be asked to  
 adopt any mitigation strategies that are more stringent** than the mitigation  
 strategies asked of similarly situated entities or activities.

6 In addition, we note that while many types of **gatherings** are important for civic and  
 7 economic well-being, religious **worship has particularly profound significance** to  
 communities and individuals, including as a right protected by the First Amendment.  
 8 **State and local authorities are reminded to take this vital right into account**  
 when establishing their own re-opening plans... (Emphasis added.)

9 CDC does not recommend closure of places of worship. CDC does not recommend banning  
 10 children and youth programs in churches. CDC does not recommend remote services (except for  
 11 those at higher risk for severe illness). CDC warns local health officials not to impose more  
 12 stringent mitigation measures on religious gatherings than on similar secular gatherings. CDC does  
 13 not recommend prohibiting singing. To the contrary, on its website, CDC posts a link to a recent  
 14 scientific study published by the Aerosol Science and Technology Journal that studied the reduction  
 15 of the spread of the virus by groups wearing masks while singing and concluded: “a common face  
 16 mask also appears to be very efficient in reducing emissions” and when “singing loud with a  
 17 surgical mask, almost no droplets were detected with the camera” and group singing can be  
 18 appropriate when “prevention measures are applied, such as distancing, hygiene, ventilation and  
 19 shielding.”<sup>10</sup>

20 7. In contrast, defendants are continually updating a web of state and county shutdown orders  
 21 applicable to religious gatherings that include myriad competing provisions such as closures and  
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23  
 24 <sup>10</sup> Alsved, Matamis, Bohlin, *et al.*, *Exhaled Respiratory Particles During Singing and Talking*, Aerosol Science  
 and Technology, September 17, 2020. Exhibit 94 hereto incorporated herein.

1 maximum capacity restrictions, the stricter of which provisions applies.<sup>11</sup> Not only do the various  
 2 orders differ in extent of restriction, but they conflict with each other and are difficult to reconcile.  
 3 In addition, while the orders ban and restrict religious gatherings, including worship, singing, and  
 4 children and youth education, programs, and activities in places of worship, they exempt similar  
 5 secular gatherings in airport terminal gates, where people gather in close proximity for extended  
 6 periods (similar in duration, proximity, and numbers to religious gatherings) and allow secular  
 7 children and youth programs.

8 8. From March 17, 2020, to October 13, 2020, all places of worship in Santa Clara County  
 9 were closed completely to indoor worship.<sup>12</sup> For seven months, not one pastor could assemble with  
 10 one parishioner in any church in 15 cities within 1,312 square miles in a population of 1,900,000  
 11 people.<sup>13</sup> There were no exceptions, not even if two people wore surgical masks and physically  
 12 distanced on opposite sides of the largest cathedral. From October 13, 2020, to November 16, 2020,  
 13 places of worship were partially open to indoor activities on a highly restricted basis – only 25% of  
 14 capacity or 100 people, whichever was less.<sup>14</sup> They are now closed again to indoor worship.<sup>15</sup>

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16 <sup>11</sup> Depending on “tier” status, the state shutdown orders close places of worship or restrict maximum capacity,  
 17 prohibit worship in song, and prohibit religious children and youth education, programs, and activities (effectively  
 18 abolishing Sunday School, Children’s Church, Vacation Bible School, Youth Camps, etc.), and allow county health  
 orders to impose stricter rules. SCCPH orders are among the strictest in the state, limiting places of worship beyond the  
 restrictions imposed by the state. For a summary of the effect of the various orders, *see Appendix A* hereto incorporated  
 herein.

19 <sup>12</sup> County Health Officer Order, March 16, 2020. Exhibit 57 hereto incorporated herein. County Health Officer  
 20 Order, March 31, 2020. Exhibit 58 hereto incorporated herein. County Health Officer Order, April 29, 2020. Exhibit 59  
 hereto incorporated herein. County Health Officer Order, May 18, 2020. Exhibit 60 hereto incorporated herein. County  
 Health Officer Order, July 2, 2020. Exhibit 61 hereto incorporated herein.

21 <sup>13</sup> County of Santa Clara, *About the County*. Exhibit 83 hereto incorporated herein.

22 <sup>14</sup> *Mandatory Directive: Gatherings*, July 14, 2020 (revised October 9, 2020), p. 4. Exhibit 67 hereto  
 incorporated herein.

23 <sup>15</sup> Santa Clara County Tier Assignment. Exh. 26-2. Blueprint for a Safer Economy, Activity and Business Tiers.  
 24 Exhibit 27 hereto incorporated herein. *Mandatory Directive: Gatherings*, July 14, 2020 (revised November 16, 2020).  
 Exhibit 70-3 hereto incorporated herein. *Mandatory Directive: Capacity Limitations*, November 15, 2020 (revised  
 November 16, 2020). Exhibit 70-2 hereto incorporated herein.

9. During that same period – mid-March to mid-October – defendants allowed more than 554,462 people to gather and mix together indoors in large groups at departure gates at Mineta San Jose International Airport (SJC), night and day, in close proximity in waiting areas at 30 terminal gates,<sup>16</sup> allowed millions more to ride together on Bay Area Rapid Transit (BART),<sup>17</sup> allowed thousands to gather in mass peaceful protests,<sup>18</sup> and allowed children and youth to gather in secular programs (while not one child could interact with one other child in his own church).<sup>19</sup>

10. Even once the state reopens churches to indoor worship again, assuming it ever does, it has no plan to open them indoors to more than 50% capacity.<sup>20</sup> Worse yet, SCCPH apparently has no plan to open churches in this county to any capacity greater than 25% or 100 people, whichever is fewer.<sup>21</sup> Plaintiffs' congregations are not allowed to gather together. Yet, defendants allow unlimited large scale secular gatherings to remain together in close proximity for extended periods at airports and on mass transit and they do not enforce gathering orders against peaceful protestors.

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And, while places of worship in Santa Clara County are shut down to indoor operations completely, under the SCC *Mandatory Directive on Capacity Limitations*, issued November 15, 2020 (revised November 16, 2020), the following operations remain open: shopping centers (25% capacity), retail stores (25% capacity), grocery stores (50% capacity), personal care businesses (to the extent people can maintain 6' distance from one another), construction sites (to the extent people can maintain 6' distance from one another), public transit (to the extent people can maintain 6' distance from one another), and food packing and processing facilities (to the extent people can maintain 6' distance from one another). Exh. 70-2.

<sup>16</sup> Mineta San Jose International Airport, Monthly Activity Reports. Exhibit 85 hereto incorporated herein.

<sup>17</sup> Bay Area Rapid Transit Press Release, *BART Releases 15-Step Plan to Welcome Back Riders as Region Opens*, July 31, 2020. Exhibit 48 hereto incorporated herein.

<sup>18</sup> Ali-Ahmad, *Nearly Two Thousand Protestors Gather in Cupertino*, Estoque, June 12, 2020. Exhibit 121 hereto incorporated herein.

<sup>19</sup> See Appendix A.

<sup>20</sup> CDPH *COVID-19 INDUSTRY GUIDANCE: Places of Worship and Providers of Religious Services and Cultural Ceremonies*, July 29, 2020. Exhibit 32 hereto incorporated herein. Blueprint for a Safer Economy, Activity and Business Tiers. Exh. 27.

<sup>21</sup> *Mandatory Directive: Gatherings*, July 14, 2020 (revised November 4, 2020), exhibit 69 hereto incorporated herein, p. 4; *Mandatory Directive: Capacity Limitations*, November 15, 2020, p. 2. Exhibit 70-1 hereto incorporated herein.

11. A study by mental health professionals published by CDC concludes that shut-down orders are causing widespread mental and emotional harm to people including anxiety and depression disorders, trauma and stressor related disorder, substance abuse, and suicidal ideation.<sup>22</sup> According to local mental health professionals, the isolation is also triggering eating disorders, stigma, secrecy, and shame.<sup>23</sup>

12. The shutdown orders are causing additional serious harm as some churches have permanently closed.

13. This action seeks to restore the rights defendants have suspended. Plaintiffs are not seeking special treatment. They are only seeking equal protection under the law. Communities of faith can gather responsibly under the same rules as people gather at airport terminal gates, on mass transit, and at protests.

14. Plaintiffs bring this action on behalf of their churches and the members of their congregations. They are seeking urgent injunctive relief to enjoin shutdown orders that are causing actual harm and state on information and belief the allegations herein.

#### **PARTIES TO THE ACTION**

15. Plaintiff Gateway City Church is a multi-site church and California non-profit corporation organized exclusively for religious purposes with its principal place of business and worship in the City of San Jose, California, and with campuses and congregations in the counties of Santa Clara, Sonoma, Fresno, and Stanislaus, and in the states of Arizona and Nevada.

<https://mygatewaycity.church/>

<sup>22</sup> Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report (MMWR)*, August 14, 2020. Exhibit 3 hereto incorporated herein.

<sup>23</sup> “The Eating Disorders Resource Center has added a new online support group for those whose unhealthy eating behaviors are triggered by the social isolation of the COVID-19 pandemic. . . . Many people struggle with the stigma, secrecy and shame that surround eating disorders,” says Janice Bremis, the center’s executive director. “A support group can be the first place one starts the recovery process’.” Gelhaus, *Los Gatos Community Briefs for the Week of Nov. 13*, The Mercury News, November 8, 2020. Exhibit 138 hereto incorporated herein.



1 16. Plaintiff The Home Church, Inc., is a church and California non-profit corporation organized  
2 exclusively for religious purposes with its principal place of business and worship in the City of  
3 Campbell, California. <https://www.thehomechurch.org/>

4 17. Plaintiff The Spectrum Church, San Francisco Bay Area, Inc., is a church and California  
5 non-profit corporation organized exclusively for religious purposes with its principal place of  
6 business and worship in the City of San Jose, California. <https://thespectrum.church/>

7 18. Plaintiff Orchard Community Church of Campbell is a church and California non-profit  
8 corporation organized exclusively for religious purposes with its principal place of business and  
9 worship in the City of Campbell, California. <https://orchardcommunity.org/>

10 19. Plaintiff Trinity Bible Church is a church and California non-profit corporation organized  
11 exclusively for religious purposes with its principal place of business and worship in the City of  
12 Morgan Hill, California. <https://trinitybiblechurch.org/>

13 20. Defendant Gavin Newsom (“Newsom”) is sued in his official capacity as Governor of the  
14 State of California (“state”) and Newsom resides in California.

15 21. Defendant Sandra Shewry, M.D. (“Shewry”) is sued in her official capacity as Acting  
16 Director of the California Department of Public Health (CDPH) who has adopted, ratified,  
17 maintained, and modified her predecessor’s public health orders and Shewry resides in California.

18 22. Defendant County of Santa Clara (SCC) is a public entity formed under the laws of the State  
19 of California, comprised of agencies, departments, and officials, including its Board of Supervisors,  
20 Office of the District Attorney, Office of County Counsel, Public Health department, and Office of  
21 the Sheriff (collectively “county”).

22 23. Defendant Sarah H. Cody, M.D. is Public Health Officer (“Cody”) for SCC Public Health  
23 (“SCCPH”) and is sued in her official capacity, and is a resident of Santa Clara County, California.



## JURISDICTION

24. This Court has federal question jurisdiction over this civil rights action that raises questions of federal law and rights under the First, Fourth, Fifth, Sixth, Seventh, Eighth, and Fourteenth Amendments to the U.S. Constitution, actionable under federal law, including, 42 U.S.C. § 1983.

25. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

26. This Court has authority to grant the requested declaratory relief under 28 U.S.C. §§ 2201 and 2202, the requested injunctive relief under 28 U.S.C. § 1343, and reasonable attorneys' fees and costs under 42 U.S.C. § 1988. This Court's jurisdiction includes the power to restrain emergency executive orders that restrict constitutional rights "pending proper judicial inquiry of whether an exigency existed and still exists that justifies attempts to restrict constitutional rights." See *Sterling v. Constantin*, 287 U.S. 378 (1932).

## VENUE

27. Venue is appropriate in this Court as a substantial number of the events that give rise to plaintiffs' claims took place in this district and at least one defendant is located within this district.

## INTRADISTRICT ASSIGNMENT

28. This case should be assigned to the San Jose Division of this District as the lawsuit arose in SCC and Plaintiffs, their congregations, and two defendants are located within SCC.

## URGENT RELIEF REQUIRED

29. Newsom's shutdown orders suspended rights as of March 19, 2020.<sup>24</sup> On April 28, the state included "Clergy for essential support and faith-based services" in its designation of "Essential Critical Infrastructure Workers" that "work to protect communities, while ensuring continuity of functions critical to public health and safety . . . ." The state nonetheless allowed in person secular

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<sup>24</sup> Newsom Executive Order No. N-33-20. Exhibit 16 hereto incorporated herein. *Guidance for the Prevention of COVID-19 Transmission for Gatherings*, dated March 16, 2020. Exhibit 29 hereto incorporated herein. *Counties Statewide Can Reopen Places of Worship for Religious Services, etc.* Exhibit 44 hereto incorporated herein.

workforces but prohibited in person religious workforces.<sup>25</sup> Thus, the state’s shutdown orders infringe on constitutional rights of peaceable assembly and free practice of religion. The county excludes churches from “essential activities” and “essential businesses.”<sup>26</sup> These exclusions are the foundation for secular businesses to remain open while all places of worship are closed.

30. SCCPH has criminalized violations of local health orders.<sup>27</sup> This necessarily criminalizes the exercise of the right of assembly and practice of religion prohibited by the shutdown orders.

31. On August 28, 2020, the county enacted a new Ordinance No. NS-9.291 to enforce state and county health orders, which makes it a misdemeanor to obstruct either of the newly created “Enforcement Officer” and “Hearing Officer” or to obstruct the “Health Officer,” or their designees, who have the power to arrest and jail citizens, and convictions are punishable by up to one year in jail. In addition, violations of a health order are subject to a civil penalty of up to \$5,000 per day.<sup>28</sup>

State law and county ordinances have similar power of arrest punishments.<sup>29</sup>

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<sup>25</sup> Essential Workforce, p. 16, ¶ 16. Exhibit 28 hereto incorporated herein.

<sup>26</sup> County Health Officer Order., March 16, 2020, ¶ 10a (“essential activities” defined), ¶ 10f (“essential businesses” defined). Exh. 57. County Health Officer Order, March 31, 2020. Exh. 58. County Health Officer Order, April 29, 2020. Exh. 59. County Health Officer Order, May 18, 2020. Exh. 60. County Health Officer Order, July 2, 2020. Exh. 61.

<sup>27</sup> The county health order in effect at the time this complaint was filed states, “Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both.” County Health Officer Order, October 5, 2020. Exhibit 62 hereto incorporated herein.

In response to a question whether there is the possibility of a criminal charge for violation of health orders, James William, Santa Clara County Counsel, stated, “Violation of the health orders is a crime, so that’s absolutely something that’s available.” Noyes, *South Bay Church Holds Indoor Services as COVID-19 Fines Reach \$100k, Criminal Charge Possible*, ABC7News, September 7, 2020. Exhibit 129 hereto incorporated herein.

<sup>28</sup> In Ordinance No. NS-9.291, the County adopted the following punishment: “Any person who willfully resists, delays, or obstructs any Enforcement Officer, Health Officer, or Hearing Officer in the discharge or attempt to discharge any duty of his or her office or employment in connection with this Ordinance shall be guilty of a misdemeanor, punishable by a fine not exceeding \$1,000, or by imprisonment in a County jail not to exceed one year, or by both that fine and imprisonment...” Exhibit 49 hereto incorporated herein.

<sup>29</sup> The Health Officer or his or her designees may arrest a person without a warrant whenever he or she has reasonable cause to believe the person has violated the Santa Clara County Ordinance in his or her presence. Cal. Penal Code section 836.5, exhibit 13 hereto incorporated herein; Santa Clara County Ordinance Code section A18-32. Exhibit 52 hereto incorporated herein. The Ordinance authorizes the Health Officer to prohibit assembly during an epidemic. Santa Clara County Ordinance Code section A18-33. Exhibit 53 hereto incorporated herein.

32. The District Attorneys' Office dispatches police departments to threaten to issue citations for non-compliance with health orders.<sup>30</sup> On Easter Sunday, April 12, 2020, for example, the day Christians all over the world celebrate the resurrection of their Lord and Savior Jesus Christ, the San Jose Police Department detained a pastor and disbursed members of the congregation who had gathered inside their cars in a drive-in theater parking lot to worship.<sup>31</sup>

33. The county has threatened to arrest and jail pastors for holding worship services<sup>32</sup> and has sued pastors and churches and assessed fines of a combined \$450,000.00 against two churches alone.<sup>33</sup>

34. The suspension of religious rights and harsh enforcement measures chill the rights of all communities of faith to assemble peacefully and practice their religion.

35. As of November 19, 2020, SCC COVID-19 Demographics Dashboard posted a cumulative total of 459 deaths and 29,631 cases since the pandemic started (nearly 80% of the deaths had one or more known comorbidities).<sup>34</sup> This means a survival rate of 98.45% of all people who tested positive for COVID-19.

36. In addition, statistically, 98% of the outbreaks of COVID-19 in this county from August through September were comprised of workers at construction sites, at food service and restaurant facilities, in retail operations, and at a grocery store. There was one outbreak among workers at a

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<sup>30</sup> Rusch and Smith, *How Do You Enforce a Law That Tramples the Land of the Free?*, The New York Times, May 12, 2020. Exh. 101.

<sup>31</sup> Harrington, *San Jose Church Hosting Easter Services at Drive-In Movie Theater*, The Mercury News, April 11, 2020. Exhibit 100 hereto and incorporated herein.

<sup>32</sup> Reyes, *San Jose Church Fighting Back Against County as Pastor Faces Fines, Jail Time for Holding Indoor Services*, ABC7News, November 1, 2020. Exhibit 136 hereto incorporated herein.

<sup>33</sup> The County has levied fines of \$350,000 against Calvary Chapel in San Jose and \$100,000 in fines against North Valley Baptist Church in Santa Clara. Exhibits 137 and 129 hereto, respectively, incorporated herein.

<sup>34</sup> SCC Demographics of Cases and Deaths, Oct. 15, 2020. Exhibit 76 hereto incorporated herein.

1 place of worship, which comprised 2% of the total, according to SCCPH.<sup>35</sup>

2 37. The stated purpose of the shutdown orders is to mitigate potential risk of spread of the  
3 virus.<sup>36</sup> Closing churches while allowing large scale gatherings in waiting areas of gates at airports,  
4 on mass transit, and at mass protests or secular children and youth programs does not advance that  
5 purpose. Nor does it advance that purpose when Governor Newsom himself does not comply with  
6 his own gathering orders.<sup>37</sup>

7 38. CDPH's blueprint is a four-tier partial reopening plan that closes places of worship in  
8 counties in the highest risk tier (purple). The blueprint allows religious gatherings to be held  
9 outdoors, limited to numbers that allow "strict physical distancing," in all four tiers (purple, red,  
10 orange, and yellow) and indoors in restricted capacities in three tiers (red, orange, and yellow).<sup>38</sup>  
11 There is no plan to reopen churches indoors at more than 50% maximum capacity (yellow tier).<sup>39</sup>

12 39. SCCPH orders are typically stricter than and not in alignment with the Blueprint with  
13 respect to religious gatherings while SCCPH exempts gatherings at airports, on mass transit, and for  
14 childcare and youth education.

15 40. From March 17, 2020 to October 13, 2020, SCCPH closed all places of worship in the

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17 <sup>35</sup> Woodfolk, *Coronavirus: How Silicon Valley Cases Spread may Surprise You*, *The Mercury News*, October 25, 2020. Exhibit 134 hereto and incorporated herein.

18 <sup>36</sup> Exh. 57, ¶ 1; exh. 58, ¶ 2; exh. 59, ¶ 2; exh. 60, ¶ 2; exh. 61, ¶ 1b.

19 <sup>37</sup> Bollag, *Gavin Newsom Apologizes for Attending French Laundry Party: "I Made a Bad Mistake,"* The  
20 Sacramento Bee, November 16, 2020. Exhibit 139-1 hereto incorporated herein. Melugin and Insheiwat, *FOX 11  
Obtains Exclusive Photos of Gov. Newsom at French Restaurant Allegedly not Following COVID-19 Protocols*, FOX  
11 Los Angeles, November 19, 2020. Exhibit 139-2 hereto incorporated herein.

21 <sup>38</sup> *COVID-19 INDUSTRY GUIDANCE: Places of Worship and Providers of Religious Services and Cultural  
Ceremonies*, July 29, 2020. Exh. 32. Blueprint for a Safer Economy, Activity and Business Tiers. Exh. 27.

22 A county's tier status is reassessed every three weeks. The blueprint provides for a county to revert to a more restrictive  
23 tier if risk metrics worsen or move to a less restrictive tier if metrics improve. The blueprint also vests discretion in local  
health officers to impose stricter rules in all tiers. The stricter of the blueprint or local health order applies. This means  
places of worship may be closed in one county that are open in another county with the same metrics.

24 <sup>39</sup> Blueprint for a Safer Economy, Activity and Business Tiers. Exh. 27.

1 county.<sup>40</sup> It prohibited even outdoor religious services until May 22, 2020. At that point, it  
 2 prohibited all but 25 people from gathering outdoors.<sup>41</sup> As of July 17, 2020, it allowed 60 people  
 3 outdoors.<sup>42</sup> Beginning on October 13, 2020, when SCC moved briefly into the “Moderate Risk”  
 4 (orange tier), SCCPH allowed partial indoor worship with severe restrictions.<sup>43</sup> That ceased,  
 5 however, on November 16, 2020.<sup>44</sup>

6 41. For the brief period of time indoor worship was allowed, the restrictions kept places of  
 7 worship closed to virtually all of the members of larger congregations such as plaintiff GCC. For  
 8 example, even a church with 2,000 congregants was limited to a maximum gathering of 100 people  
 9 – a mere 5%. The remaining 1,900 congregants, who have an equal constitutional right to assemble  
 10 and practice their religion, were unable to attend religious gatherings. Even if a church like plaintiff  
 11 GCC had held Sunday services all day long on the Lord’s day, which would have been a challenge  
 12 to accomplish, it could not possibly have accommodated its entire congregation.

13 42. Now the inhospitable months of fall and winter have arrived. Outdoor worship is not an  
 14 option for plaintiffs, whose congregations include all ages from infants to the elderly. There is  
 15 literally no way for them to assemble and practice their religion.

16 43. Even when CDPH allows indoor worship (red, orange, and yellow tiers), it prohibits indoor  
 17 gatherings of children and youth, treating them differently than children participating in secular  
 18 children and youth programs. In addition, unlike secular activities, CDPH does not allow food or  
 19 beverages at indoor services. Strict six foot distancing is required outdoors. CDPH’s *COVID-19*

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20 <sup>40</sup> County Health Officer Order, March 16, 2020. Exh. 57.

21 <sup>41</sup> County Health Officer Order, May 18, 2020. Exh. 60.

22 <sup>42</sup> County Health Officer Order., July 2, 2020. Exh. 61.

23 <sup>43</sup> County Health Officer Order., October 5, 2020. Exh. 62. *See also* Appendix A.

24 <sup>44</sup> *Mandatory Directive: Gatherings*, July 14 (revised November 16, 2020), Exh. 70-3; *Mandatory Directive: Capacity Limitations*, November 15, 2020 (revised November 16, 2020). Exh. 70-2.

1 *INDUSTRY GUIDANCE: Places of Worship and Providers of Religious Services and Cultural*  
 2 *Ceremonies* states in pertinent part:

3 Children should remain in the care of those in their household unit and not interact  
 4 with children of other parties at any time while visiting facilities. Close play areas  
 5 and discontinue activities and services for children where physical distancing of at  
 6 least six feet cannot be maintained.<sup>45</sup>

7 CDPH thereby prohibits churches from providing children and youth programs such as Catechism,  
 8 Sunday School, Vacation Bible School, Children’s Church, Preschool, Childcare, Youth Groups,  
 9 Youth Camps, religious education, or other programs and activities in places of worship.

10 44. CDPH gives more favorable treatment to secular children and youth education, programs,  
 11 and activities. Even in counties in the purple tier, it allows secular schools to remain open,<sup>46</sup> secular  
 12 day camps to remain open,<sup>47</sup> secular youth cohort groups to remain open,<sup>48</sup> and secular providers of  
 13 children and youth “in person programs, lessons, activities, and/or entertainment primarily for  
 14 minors under the age of 18” (“Youth Programs”) to open. Contrary to worship services, at which  
 15 children “should remain in the care of those in their household unit,”<sup>49</sup> “[p]arent participation is not  
 16 allowed” and parents are encouraged to “dropoff or pickup” at the entrance of the Program’s facility  
 17 for secular programs. In addition, for secular Youth Activities, there is no rigid social distance  
 18 requirement and youth and children daily eat food and beverages indoors.<sup>50</sup>

19 45. Newsom’s stated reason for closure of all churches was his assessment of risk and reward

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20 <sup>45</sup> Exh. 32.

21 <sup>46</sup> CDPH *COVID-19 INDUSTRY GUIDANCE: Schools and School-Based Programs*, August 3, 2020, exhibit 34  
 22 hereto incorporated herein, CDPH *COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in*  
 23 *California, 2020-2021 School Year*, July 17, 2020, p. 2. Exh. 31.

24 <sup>47</sup> CDPH *INTERIM GUIDANCE: Day Camps*, July 29, 2020. Exhibit 33 hereto incorporated herein.

25 <sup>48</sup> CDPH *Guidance Related to Cohorts*, September 4, 2020. Exhibit 35 hereto incorporated herein.

<sup>49</sup> *COVID-19 INDUSTRY GUIDANCE: Places of Worship and Providers of Religious Services and Cultural*  
*Ceremonies*, July 29, 2020. Exh. 32.

<sup>50</sup> See Appendix A.

1 and his “fear,” “anxiety,” and “concern” over “congregations of people mixing from far and wide,  
2 coming together, proximate in an enclosed space at large scales.”<sup>51</sup> (“Gathering Activities”).

3 46. Yet, Newsom, CDPH, and SCCPH exempt Gathering Activities in airports and mass transit  
4 where large scales of people congregate all day and night, mixing from far and wide from all over  
5 the world, coming together in close proximity for extended periods in an enclosed space.

6 47. Religious gatherings are lower risk. They occur a handful of times a week for a limited  
7 period with a known congregation who reside in the same county. Members of congregations hold  
8 their pastors and elders in high regard and will follow their lead with respect to mitigation measures.  
9 Churches have volunteers, deacons, ushers, greeters, security, and staff to explain and monitor  
10 orderly and responsible assembly.

11 48. Religious gatherings are high reward because, as recognized by both the state and the  
12 county, they are vital to the health and well-being of people’s minds and souls, and that is  
13 particularly important in a time such as this when the pandemic and shutdown orders are threatening  
14 the mental health and well-being of millions, including communities of faith.<sup>52</sup>

15 49. There is an important benefit to religious gatherings that are vital to the health of the souls of  
16 the nearly 20 million Californians to whom religion is “very important.”<sup>53</sup> Reopening churches will  
17 allow their leaders to restore the failing health of the souls and spirits of the men, women, youth,

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18  
19 <sup>51</sup> In a press conference on May 7, 2020, the following question and answer with the governor:  
20 “Thank you, Governor. Can you clarify why churches . . . are in phase three and not phase two? [50:42] We’re  
21 looking at . . . low risk, high reward, low risk, low reward, looking at a series of conditions and criteria . . .”  
[50:59] Our fear is simply this, congregations of people mixing from far and wide, coming together, proximate  
in an enclosed space at large scales is a point of obvious concern and anxiety. [53:07]. Exhibit 18 hereto  
incorporated herein,

22 <sup>52</sup> Stokols, Newsom Promises Reopening Plan for Churches as Trump Demands Immediate Action, Los Angeles  
23 Times, May 22, 2020 (“[w]e have been very aggressive in trying to put together guidelines that will do justice to  
people’s . . . fundamental need and desire to practice their faith”), exhibit 102 hereto and incorporated herein; County  
Health Officer Order, May 18, 2020, App. C-2, ¶ (5) (“religious gatherings . . . are vital to people’s social and spiritual  
well being”). Exh. 60.

24 <sup>53</sup> Pew Research Center, Religious Landscape Study, February 29, 2015. Exh. 92.



1 and children in their congregations. The harm to the health of individuals who have been denied  
 2 entrance into the house of God is at least as compelling a public health interest as is mitigating  
 3 potential exposure to a virus, particularly when simple personal conduct can protect people from the  
 4 virus, and particularly given there is only one incident of historical spread in a place of worship in  
 5 this county.<sup>54</sup>

6 50. There is no plan or set of metrics to reopen churches to full capacity. The state has a partial  
 7 reopening plan that at best opens churches to a maximum of 50% facility capacity in the least  
 8 restrictive minimal risk, yellow tier.<sup>55</sup> Historically, SCCPH has been more restrictive than the state  
 9 with respect to places of worship.<sup>56</sup>

10 51. Urgent relief is needed because defendants have prohibited and restricted congregations  
 11 from gathering in places of worship for more than eight months through a web of orders not  
 12 narrowly tailored to advance the stated interest of limiting spread of the virus.

13 52. Plaintiffs have no adequate remedy at law.

## 14 THE FACTS

### 15 Plaintiffs' Beliefs, Worship and Religious Practices

16 53. Plaintiffs are Christian churches who are bodies of believers (congregations) who assemble  
 17 in the sanctuary of their churches to worship the Lord under the spiritual oversight of pastors and  
 18 elders. The shutdown order is causing immense harm to the minds and souls of people of faith for  
 19 whom it is a way of life to worship with other believers.

20 54. Plaintiffs believe the Holy Bible (Judeo-Christian text) is the inspired word of God and sets

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21  
 22 <sup>54</sup> *Woodfolk, Coronavirus: How Silicon Valley Cases Spread may Surprise You, The Mercury News, October 25, 2020.* Exh. 134.

23 <sup>55</sup> *COVID-19 INDUSTRY GUIDANCE: Places of Worship, etc., July 29, 2020.* Exh. 32. Blueprint for a Safer Economy, Activity and Business Tiers. Exh. 27.

24 <sup>56</sup> *Mandatory Directive: Gatherings, July 14 (revised November 4, 2020).* Exh. 69.

1 forth the rules of their faith and religious practice.<sup>57</sup>

2 55. God created men and women in his own image<sup>58</sup> with a soul and body.<sup>59</sup> The soul is the  
3 heart and emotions and mind of men and women. The soul is what makes people human. The health  
4 of the soul is essential to the health of the body.<sup>60</sup>

5 56. The psalmist described the intense desire of God's people to dwell in the house of the Lord  
6 all their life:

7 One thing have I desired of the LORD, that will I seek after; that I may dwell in the  
8 house of the LORD all the days of my life, to behold the beauty of the LORD, and to  
enquire in his temple. Psalm 27:4. KJV

9 The psalmist describes this desire: "My soul longs, yes, faints for the courts of the LORD; my heart  
10 and flesh sing for joy to the living God." Psalm 84:2 "For a day in your courts is better than a  
11 thousand elsewhere. I would rather be a doorkeeper in the house of my God than dwell in the tents  
12 of wickedness." Psalm 84:10. God's people enter his house with thanksgiving and come into his  
13 presence with singing and praise and worship in his sanctuary.<sup>61</sup>

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15 <sup>57</sup> "All scripture is given by inspiration of God, and is profitable for doctrine, for reproof, for correction, for  
16 instruction in righteousness." Timothy 3:16.

17 <sup>58</sup> "So God created mankind in his own image, in the image of God he created them." Genesis 1:27 NIV

18 <sup>59</sup> "May God himself, the God of peace, sanctify you through and through. May your whole spirit, soul and body  
19 be kept blameless at the coming of our Lord Jesus Christ." 1 Thessalonians 5:23 NIV.

20 <sup>60</sup> "Beloved, I pray that all may go well with you and that you may be in good health, as it goes well with your  
21 soul." 3 John 1:2 ESV

22 <sup>61</sup> "Serve the Lord with gladness: come before his presence with singing. Know ye that the Lord he is God: it is  
23 he that hath made us, and not we ourselves; we are his people, and the sheep of his pasture. Enter into his gates with  
24 thanksgiving, and into his courts with praise: be thankful unto him, and bless his name." (Psalm 100:2-4 KJV) O come,  
25 let us worship and bow down: let us kneel before the LORD our maker. "Praise ye the LORD. (Psalms 95:6 KJV) Praise  
God in his sanctuary: praise him in the firmament of his power." (Psalm 150:1 KJV) "Saying, I will declare thy name  
unto my brethren, in the midst of the church will I sing praise unto thee." (Hebrews 2:12 KJV) "Praise ye the LORD.  
Sing unto the LORD a new song, and his praise in the congregation of saints." (Psalm 149:1 KJV) "Shout for joy to the  
LORD, all the earth. Worship the LORD with gladness; come before him with joyful songs. Know that the LORD is  
God. It is he who made us, and we are his; we are his people, the sheep of his pasture. Enter his gates with thanksgiving  
and his courts with praise; give thanks to him and praise his name." (Psalm 100:1-5) "All the nations you have made  
will come and worship before you, Lord; they will bring glory to your name. For you are great and do marvelous deeds;  
you alone are God." Psalm 86:9-10.

57. This hunger of the soul to draw closer to God is a longing only God can satisfy.<sup>62</sup> It is the soul that loves the Lord with all a person's mind and heart.<sup>63</sup> It is the soul that blesses the Lord.<sup>64</sup> It is the soul that magnifies the Lord.<sup>65</sup> The health of the soul is the most valuable thing on earth.<sup>66</sup>

58. The ancient covenant of worship between God and His people is a divine promise to deliver worshippers from their enemies.<sup>67</sup> God covenants to heal their disease, renew worshippers' strength, redeem their fallen lives, forgive their iniquities and crown worshippers with steadfast love and mercy.<sup>68</sup>

59. The covenant of worship is carried out with reverence and awe of the power and might of a God whose kingdom cannot be shaken.<sup>69</sup> The last enemy God promises to destroy is death.<sup>70</sup> Death

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<sup>62</sup> "For he satisfies the longing soul, and the hungry soul he fills with good things." Psalm 107:9.

<sup>63</sup> "You shall love the Lord your God with all your heart and with all your soul and with all your might." Deuteronomy 6:5. "Jesus replied: 'Love the Lord your God with all your heart and with all your soul and with all your mind.'" Matthew 22:7.

<sup>64</sup> "Bless the Lord, O my soul, and all that is within me, bless his holy name!" Psalm 103:1.

<sup>65</sup> "And Mary said, "My soul magnifies the Lord," Luke 1:46 ESV.

<sup>66</sup> "What good will it be for someone to gain the whole world, yet forfeit their soul? Or what can anyone give in exchange for their soul?" Matthew 16:26.

<sup>67</sup> "Do not forget the covenant I have made with you, and do not worship other gods. Rather, worship the LORD your God; it is he who will deliver you from the hand of all your enemies." 2 Kings 17:38-39.

"... Yet a time is coming and has now come when the true worshipers will worship the Father in the Spirit and in truth, for they are the kind of worshipers the Father seeks. God is spirit, and his worshipers must worship in the Spirit and in truth." John 4:21-24.

<sup>68</sup> "Of David. Bless the Lord, O my soul, and all that is within me, bless his holy name! Bless the Lord, O my soul, and forget not all his benefits, who forgives all your iniquity, who heals all your diseases, who redeems your life from the pit, who crowns you with steadfast love and mercy, who satisfies you with good so that your youth is renewed like the eagle's." Psalm 103:1-22 ESV.

<sup>69</sup> "Therefore, since we are receiving a kingdom that cannot be shaken, let us be thankful, and so worship God acceptably with reverence and awe, for our "God is a consuming fire." Hebrews 12:28-29.

<sup>70</sup> "The last enemy to be destroyed is death." 1 Corinthians 15:26 ESV.

1 is overcome by the promise of eternal life for those who believe in the son of God, Jesus Christ.<sup>71</sup>

2 By faith in Jesus, believers become the children of God.<sup>72</sup> A covenant of worship cannot be  
3 broken.<sup>73</sup>

4 60. Regular assembly in the house of the Lord is a biblical precept and duty of the church.<sup>74</sup>  
5 Gathering is essential to the nature of the church: “when you come together as a church” (1 Cor.  
6 11:18). Assembly is not an option. It is one of the ten commandments to keep the Lord’s day holy.<sup>75</sup>  
7 The congregational assembly is on Sundays for Plaintiffs’ churches. Assembly involves religious  
8 leaders and believers personally gathering in the temple.<sup>76</sup> The assembly includes all men, women,  
9 children, and visitors.<sup>77</sup>

10 61. Congregational worship is an expression based participatory gatherings in which people  
11 actively “come before his presence with singing” and “enter into his gates with thanksgiving,”  
12 worshipping the Lord together, in songs of praise, songs of thanksgiving, songs of joy, new songs,  
13  
14

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15 <sup>71</sup> “For God so loved the world, that he gave his only Son, that whoever believes in him should not perish but  
16 have eternal life.” John 3:16 ESV. “For the wages of sin is death, but the free gift of God is eternal life in Christ Jesus  
our Lord.” Romans 6:23 ESV. “And this is eternal life, that they know you the only true God, and Jesus Christ whom  
you have sent.” John 17:3 ESV.

17 <sup>72</sup> “For ye are all the children of God by faith in Christ Jesus.” Galatians 3:26.

18 <sup>73</sup> “If a man vows a vow to the Lord, or swears an oath to bind himself by a pledge, he shall not break his word.  
He shall do according to all that proceeds out of his mouth.” Numbers 30:1-2.

19 <sup>74</sup> “Not forsaking the assembling of ourselves together, as the manner of some is; but exhorting one another: and  
20 so much the more, as ye see the day approaching. For if we sin willfully after that we have received the knowledge of  
the truth, there remaineth no more sacrifice for sins.” Hebrews 10:25-26 KJV.

21 <sup>75</sup> “Remember the Sabbath day, to keep it holy.... The seventh day is a Sabbath to the Lord our God ... For in six  
days the Lord made heaven and earth, the sea, and all that is in them, and rested on the seventh day. Therefore the Lord  
blessed the Sabbath day and made it holy.” Exodus 20:8-11.

22 <sup>76</sup> “And day by day, attending the temple together...” Luke 22:53: “While I was with you daily in the temple  
23 ...” Acts 2:46.

24 <sup>77</sup> “Assemble the people, the men and the women and children and the alien who is in your town, so that they  
may hear and learn and fear the Lord your God, and be careful to observe all the words of this law.” Deuteronomy  
31:12-13.

1 and songs in the Spirit (collectively “worship”).<sup>78</sup>

2 62. In the assembly in God’s house, God’s people gather to worship, speak, inquire, teach, and  
3 hear the word of God together,<sup>79</sup> and partake of the sacraments together of holy communion, the  
4 Lord’s Supper,<sup>80</sup> and in the assembly new disciples are baptized and added to the church and taught  
5 to obey the Lord’s commandments;<sup>81</sup> people assemble for fellowship and breaking bread<sup>82</sup> and for

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7 <sup>78</sup> “Speaking to one another with psalms, hymns, and songs from the Spirit. Sing and make music from your heart  
8 to the Lord” Ephesians 5:19. “Let the message of Christ dwell among you richly as you teach and admonish one  
9 another with all wisdom through psalms, hymns, and songs from the Spirit, singing to God with gratitude in your  
10 hearts” Colossians 3:16. “About midnight Paul and Silas were praying and singing hymns to God, and the other  
11 prisoners were listening to them” Acts 16:25. “Sing to the Lord a new song, his praise from the ends of the earth, you  
12 who go down to the sea, and all that is in it, you islands, and all who live in them.” Isaiah 42:10. “Is anyone among you  
13 in trouble? Let them pray. Is anyone happy? Let them sing songs of praise.” James 5:13. “Come, let us sing for joy to  
14 the LORD; let us shout aloud to the Rock of our salvation.” Psalm 95:1. “When they had sung a hymn, they went out to  
15 the Mount of Olives.” Matthew 26:30. “Those who were musicians, heads of Levite families, stayed in the rooms of  
16 the temple and were exempt from other duties because they were responsible for the work day and night.” 1 Chronicles  
17 9:33. “And you will sing as on the night you celebrate a holy festival; your hearts will rejoice as when people playing  
18 pipes go up to the mountain of the LORD, to the Rock of Israel.” Isaiah 30:29. “Then I was given a measuring rod like  
19 a staff, and I was told, ‘Rise and measure the temple of God and the altar and those who worship there, but do not  
20 measure the court outside the temple.’” Revelations 11:1.

14 <sup>79</sup> “And Jesus began to say, as He taught in the temple, ‘How is it that the scribes say that the Christ is the son  
15 of David?’” Mark 12:35. “Then, after three days they found Him in the temple, sitting in the midst of the teachers, both  
16 listening to them and asking them questions.” Luke 2:46. “Early in the morning He came again into the temple, and all  
17 the people were coming to Him; and He sat down and began to teach them.” John 8:42. “Then Jesus cried out in the  
18 temple, teaching and saying, ‘You both know Me and know where I am from; and I have not come of Myself, but He  
19 who sent Me is true, whom you do not know.’” John 7:28. “These words He spoke in the treasury, as He taught in the  
20 temple.” John 8:20. “Jesus answered him, ‘I have spoken openly to the world; I always taught in synagogues and in the  
21 temple, where all the Jews come together; and I spoke nothing in secret.’” John 18:20. “But when it was now the midst  
22 of the feast Jesus went up into the temple and began to teach.” John 7:14.

18 <sup>80</sup> “They worshiped together at the Temple each day, met in homes for the Lord’s Supper, and shared their meals  
19 with great joy and generosity. Acts 2:26. “When you come together, it is not the Lord’s supper that you eat.” 1  
20 Corinthians 11:26. The Lord Jesus, on the night he was betrayed, took bread, and when he had given thanks, he broke it  
21 and said, “This is my body, which is for you; do this in remembrance of me.” ... “This cup is the new covenant in my  
22 blood; do this, whenever you drink it, in remembrance of me.” 1 Corinthians 11:23-27.

20 <sup>81</sup> “Therefore go and make disciples of all nations, baptizing them in the name of the Father and of the Son and of  
21 the Holy Spirit, and teaching them to obey everything I have commanded you. And surely I am with you always, to the  
22 very end of the age.” Matthew 28:19-20, known as the great commission. “Those who accepted his message were  
23 baptized, and about three thousand were added to their number that day.” Acts 2:41. “But when they believed Philip as  
24 he proclaimed the good news of the kingdom of God and the name of Jesus Christ, they were baptized, both men and  
25 women.” Acts 8:12.

23 <sup>82</sup> “On the first day of the week, when we were gathering together to break bread, Paul talked with them ... he  
24 prolonged his speech until midnight.” Acts 20:7. “They devoted themselves to the apostles’ teaching and to fellowship,  
25 to the breaking of bread and to prayer... All the believers were together ... They broke bread in their homes and ate  
together with glad and sincere hearts.” Acts 2:42-46.

1 prayer, anointing and healing of the sick,<sup>83</sup> and to pray the Lord's prayer for God's will to be done  
 2 on earth as it is heaven<sup>84</sup> and for salvation of souls that they may have eternal life through Jesus, the  
 3 son of God (collectively "faith practices").

4 63. Religious gatherings and worship and faith practices in places of worship are vital to the  
 5 souls and health of communities of faith. There is healing for all God's people when they gather in  
 6 the presence of the Lord. Luke 4:40. Luke 6:19.

7 The State has Banned Religious Practices and Dictated Alternative Religious Practices

8 64. The state has banned worship and dictated new "alternative" religious practices and  
 9 "services" as follows:

10 Discontinue singing (in rehearsals, services, etc.), chanting, and other practices and  
 11 performances ... Consider practicing these activities through alternative methods  
 12 (such as internet streaming) that ensure individual congregation members perform  
 13 these activities separately in their own homes... Places of worship should continue to  
 14 provide services through alternative methods (such as via internet live and/or  
 recorded streaming, telephone, drive-in, etc.) ... Consider modifying practices that  
 are specific to particular faith traditions ... Examples are discontinuing kissing of  
 ritual objects, allowing rites to be performed by fewer people, avoiding the use of a  
 common cup, offering communion in the hand instead of on the tongue ..."<sup>85</sup>

15 65. The ban on religious assembly and worship violates the laws and commandment of God and  
 16 the covenant of worship. The ban abolishes constitutional rights that protect essential religious  
 17 practices of plaintiffs that go to the very heart and core of their religion.

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18  
 19 <sup>83</sup> "And the blind and the lame came to Him in the temple, and He healed them." Matthew 21:14 "Is anyone  
 20 among you sick? Let him call for the elders of the church, and let them pray over him, anointing him with oil in the  
 name of the Lord." James 5:14 "There was a man who was born lame. He was being carried to the gate of the temple ...  
 21 Peter said, 'I don't have any silver or gold, but I do have something to give you: in the name of Jesus Christ of Nazareth,  
 rise up and walk! ... He leaped up, stood, and began to walk. He went with Peter and John into the temple. He was  
 walking, leaping, and praising God.'" Acts 3:2-8.

22 <sup>84</sup> "Pray then like this: "Our Father in heaven, hallowed be your name. Your kingdom come, your will be done,  
 23 on earth as it is in heaven. Give us this day our daily bread, and forgive us our debts, as we also have forgiven our  
 debtors. And lead us not into temptation, but deliver us from evil." Matthew 6:9-13.

24 <sup>85</sup> CDPH *INDUSTRY GUIDANCE: Places of Worship, etc.*, July 29, 2020. Exh. 32. See also exh. 28 ("essential  
 25 workforce" includes "[c]lergy for essential support and faith-based services that are provided through streaming or other  
 technologies").



66. CDC does not recommend banning singing. Science shows singing can be safe with mitigation measures.<sup>86</sup>

67. The state-dictated alternative of non-congregational “services” via video streaming in cyberspace is not a substitute for congregational worship. Worship services are not an individual sitting alone in a room by himself viewing video clips of a pastor speaking to empty seats and a masked worship team singing with no one to lead. Members of churches are worshippers, not spectators. Pastors of churches are shepherds of people, not talking heads on screens. Worship teams are song and praise leaders, not entertainers.

68. The state ban on assembly and worship is anathema to faith communities. The county’s dictation of alternative religious practices has created a people-less, soul-less, non-biblical alternative to congregational worship services that is repugnant to the federal constitution.

#### Disparate Treatment of High-Risk Secular Gatherings in Airports and Mass Transit

69. The governor, CDPH, and SCCPH have allowed airports and mass transit to remain wide open during the pandemic with no or few prohibitions or restrictions on travel.<sup>87</sup>

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<sup>86</sup> Centers for Disease Control and Prevention, Considerations for Communities of Faith, October 29, 2020. Exh. 6. Alsved, Matamis, Bohlin, *et al.*, *Exhaled Respiratory Particles During Singing and Talking*, Aerosol Science and Technology, September 17, 2020. Exh. 94.

<sup>87</sup> In Newsom’s Executive Order N-33-20, he ordered all residents “immediately [to] heed the current State public health directives,” and adopted the Order of the State Public Health Officer dated March 19, 2020, requiring all individuals living in the State of California to stay home except as needed to maintain continuity of operations of the federal critical infrastructure sectors. As stated in the order, the federal critical infrastructure sectors are identified at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. The sectors include the Transportation Systems Sector, defined in part as:

Aviation includes aircraft, air traffic control systems, and about 19,700 airports, heliports, and landing strips. Approximately 500 provide commercial aviation services at civil and joint-use military airports, heliports, and sea plane bases. . . .

\* \* \* \* \*

Mass Transit and Passenger Rail includes terminals, operational systems, and supporting infrastructure for passenger services by transit buses, trolleybuses, monorail, heavy rail—also known as subways or metros—light rail, passenger rail, and vanpool/rideshare. Public transportation and passenger rail operations provided an estimated 10.8 billion passenger trips in 2014.

Cybersecurity & Infrastructure Security Agency: Essential Critical Infrastructure Workers, Transportation Systems Sector Overview. Exhibits 1 and 2 hereto incorporated herein. *See also* Appendix A.



70. On March 11, 2020, in a Public Health Department press release, Cody recognized the risks and dangers that airports presented in terms of disease transmission, but she nonetheless did not recommend their closure:

As many public health officials have noted, airports present an elevated risk of exposure to COVID-19 given the number of people passing through from different locations. The risk is likely greater for airport workers, who spend long periods of time in that environment. [T]he Public Health Department is not currently recommending closure of the airport given the significant societal harms lack of access to travel would cause.<sup>88</sup>

71. In March 2020, near the beginning of the pandemic, five Transportation Security Administration (TSA) officers at SJC tested positive for COVID-19. This resulted in the quarantine of 14 employees of TSA at SJC.<sup>89</sup> Over two thousand TSA employees across the nation have tested positive for COVID-19.<sup>90</sup> The top TSA official in Kansas characterized TSA personnel as “Typhoid Marys [who] contributed to the spread of th[e] virus.”<sup>91</sup>

72. On May 15, 2020, the Centers for Disease Control and Prevention published the results of a study of international travelers in California and concluded that “[d]espite intensive effort, the traveler screening system did not effectively prevent introduction of COVID-19 into California.” The recommendation: “Health departments need to weigh the resources needed for monitoring against those needed for implementing mitigation activities during the COVID-19 pandemic.”<sup>92</sup>

73. The state’s *COVID-19 INDUSTRY GUIDANCE: Public and Private Passenger Carriers*,

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<sup>88</sup> Press Release Issued by Santa Clara County Public Health regarding COVID-19 and Airports. Exhibit 74 hereto incorporated herein.

<sup>89</sup> TSA Statement on Fifth COVID-19 Case at SJC Airport. Exhibit 9 hereto incorporated herein.

<sup>90</sup> TSA, *Coronavirus (COVID-19) Information, TSA Response to COVID-19*. Exhibit 10 hereto incorporated herein.

<sup>91</sup> Associated Press, *TSA Official Says the Agency Helped Spread Coronavirus*, June 20, 2020. Exhibit 122 hereto incorporated herein.

<sup>92</sup> Centers for Disease Control and Prevention, *Morbidity and Mortality Weekly Report (MMWR)*, May 15, 2020. Exhibit 4 hereto incorporated herein.

1 *Transit, and Intercity Passenger Rail*, October 20, 2020, has a distancing requirement that is not  
 2 evenly enforced and includes no maximum number of passengers.<sup>93</sup> It states:

3 Reduce maximum occupancy onboard transit and rail vehicles and vessels to support  
 4 physical distancing. Remove or space seats to support physical distancing or use  
 5 colored tape to mark the seats that riders are allowed to use or block off seats that are  
 not to be used. Where possible, use additional buses or transit vehicles to support  
 excess capacity on busy lines and ensure physical distancing of passengers.

6 74. Defendants impose no maximum capacity restrictions on SJC or Bay Area Rapid Transit  
 7 (BART) that extends into this county. BART is not removing seats and finds it too difficult to  
 8 monitor physical distancing but encourages three to six feet of distancing for its estimated 500,000  
 9 passengers per week (estimated 26,000,000 per year).<sup>94</sup>

10 75. The restrictions in Cody's *Mandatory Directive: Gatherings*, July 14, 2020 (revised  
 11 November 16, 2020) apply to worship services but not to airports or other transit facilities.<sup>95</sup> It  
 12 provides, in pertinent part, as follows:

13 A "gathering" is an event . . . that brings together multiple people from separate  
 14 households in a single space, indoors or outdoors, at the same time and in a  
 15 coordinated fashion—like a . . . religious service . . . [or] protest . . . [T]he State allows  
 gatherings only for purposes of worship services . . . and protest or political activities.

16 A gathering does not include, and this Directive does not apply to. . . areas where  
 people may be in transit (like train stations and airports) . . .

17 76. According to the airport website, SCCPH did not issue any orders applicable to SJC.<sup>96</sup>

18 77. During the pandemic, travelers from all over the world have congregated at SJC, amounting  
 19  
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21 <sup>93</sup> Exhibit 38 hereto incorporated herein.

22 <sup>94</sup> San Jose International Airport, *Novel Coronavirus (COVID-19) Information*, exhibit 84 hereto incorporated  
 23 herein; Bay Area Rapid Transit Press Release, *BART Releases 15-Step Plan to Welcome Back Riders as Region Opens*,  
 July 31, 2020. Exhibit 48 hereto incorporated herein.

24 <sup>95</sup> Exh. 70-2.

25 <sup>96</sup> San Jose International Airport, *Novel Coronavirus (COVID-19) Information*. Exh. 84.

1 to over 554,462 people.<sup>97</sup> At SJC, travelers gather all day and all night in the seating areas and  
 2 aisles of 30 terminal gates, as well as standing in close proximity for extended periods at gates, in  
 3 baggage areas, on security lines, at check-in areas, on escalators, in elevators, at dining areas, and in  
 4 concession stands. At a single British Airways gate, depending on the plane in use, one gathering  
 5 may number as many as almost 400 passengers.<sup>98</sup> And the configuration of SJC's gates in its  
 6 terminals creates a convergence of multiple traveler gatherings from multiple flights and gates  
 7 situated in close proximity for extended periods, increasing the combined size of traveler  
 8 gatherings.<sup>99</sup>

9 78. TSA recommends travelers arrive at SJC two hours prior to scheduled departure for  
 10 domestic flights and three hours ahead of time for international flights.<sup>100</sup> Southwest Airlines, a  
 11 popular airline at SJC, has a "Minimum Check-in Time" of 60 to 90 minutes.<sup>101</sup> SJC allows  
 12 travelers to congregate overnight in terminal gates to wait for their flights.<sup>102</sup>

13 79. The duration during which travelers congregate prior to flight is similar to the length of a  
 14 church service. That notwithstanding, the state and SCCPH do not restrict the number of travelers  
 15 gathering at SJC yet they severely restrict the maximum capacity at places of worship when they  
 16 even allow indoor gathering at all.

#### 17 Gatherings Were and Are Allowed for Secular Youth Programs and Activities

18  
 19 <sup>97</sup> Mineta San Jose International Airport, Monthly Activity Reports. Exh. 85.

20 <sup>98</sup> Meacham, *British Airways Will Use Bigger Plane for its San Jose Nonstops*, The Business Journal, December  
 21 9, 2019. Exhibit 99 hereto incorporated herein.

22 <sup>99</sup> Diagrams of SJC terminals. Exhibit 86 hereto incorporated herein.

23 <sup>100</sup> San Jose International, Security Checkpoints. Exhibit 87 hereto incorporated herein.

24 <sup>101</sup> San Jose International, Southwest. Exhibit 88 hereto incorporated herein.

25 <sup>102</sup> Norman Y. Mineta San Jose International Airport Operations Division Policy Manual, Terminal Management  
 – Overnight Lodging. Exhibit 89 hereto incorporated herein.

80. Exhibit A summarizes the disparate treatment applied to religious and non-religious youth and children's programs.

81. On July 29, 2020, the state issued a *COVID-19 INDUSTRY GUIDANCE: Places of Worship, etc.* In that order, the state mandated that at places of worship, children must remain with their parents.<sup>103</sup> The order states, in relevant part:

Children should remain in the care of those in their household unit and not interact with children of other parties at any time while visiting facilities.

As a result of that order, places of worship may not offer Sunday School or any other of the myriad programs and activities they offered to youth in their congregations prior to the advent of the COVID-19 pandemic.

82. On August 3, 2020, the state issued its *COVID-19 INDUSTRY GUIDANCE: Schools and School-Based Programs*.<sup>104</sup> Once a county leaves Tier 1 under the Blueprint, "all schools can resume full in person instruction." And schools that were allowed to open in counties that are put back in the purple tier may remain open.<sup>105</sup> Further, there is a provision for elementary schools in a county in Tier 1 to seek a waiver of the provision prohibiting in-person learning.<sup>106</sup> In other words, the state has allowed secular organizations to provide an unlimited variety of programs and activities for youth, so long as they follow the directives in the Guidance. The same is not true for a religious organization.

83. On September 21, 2020, SCCPH issued its *COVID-19 Prepared: Reopening of Santa Clara*

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<sup>103</sup> Exh. 32.

<sup>104</sup> Exh. 34.

<sup>105</sup> CDPH *COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021 School Year*, July 17, 2020. Exhibit 31 hereto incorporated herein.

<sup>106</sup> In addition, the state provides for elementary schools in counties in the purple tier to obtain a waiver to open for in-person learning. CDPH *COVID-19 and Reopening In-Person Learning Elementary Education Waiver Process*, August 3, 2020. Exhibit 47 hereto incorporated herein.

1 *County K-12 Schools*.<sup>107</sup> Under that order, schools in the county are able to open to in-person  
 2 learning so long as they follow the rules regarding face masks and distancing. There is no limitation  
 3 on the number of people who can gather. The same is not true for religious organizations.

4 84. On November 16, 2020, SCCPH issued its *Mandatory Directive: Programs Serving*  
 5 *Children or Youth*, which applies to childcare programs, preschools, summer schools, afterschool  
 6 programs, academic enrichment centers, programs providing oversight and support for children  
 7 and/or youth engaging in distance/remote or independent learning, dance classes, music lessons,  
 8 organized recreational and athletic activities for children and youth, camps, lessons, practices,  
 9 competitions, etc.<sup>108</sup> Children up to age five may gather in groups up to as many as 24 individuals,  
 10 not including supervisory personnel. Children/youth aged six years and older may gather in groups  
 11 up to as many as 16 individuals. There is no limitation on the number of such groups that may  
 12 congregate in any one facility. None of this is true for religious organizations.

13 85. SCCPH issued its *Mandatory Directive: Capacity Limitations*, November 15, 2020, as  
 14 revised November 16, 2020, that applies to places of worship.<sup>109</sup> Under that order, indoor operations  
 15 are currently prohibited in their entirety for churches.

#### 16 Selective Enforcement: Mass Protests

17 86. With her May 18, 2020, order, Cody forbade protest gatherings (“individuals may leave  
 18 their residence only to perform the following “Essential Activities” . . . ).<sup>110</sup> In her *Mandatory*  
 19 *Directive: Gatherings*, July 13, 2020, she specifically defined “gatherings” to include protests, and  
 20

21  
 22 <sup>107</sup> Exhibit 66 hereto incorporated herein.

23 <sup>108</sup> Exhibit 70-4 incorporated herein.

24 <sup>109</sup> *Mandatory Directives: Capacity Limitations*, November 15, 2020, as revised November 16, 2020. Exh. 70-2.

25 <sup>110</sup> County Health Officer Order, May 18, 2020. Exh. 60.

1 limited them to 60 people with a requirement that all attendees wear a face mask.<sup>111</sup> Despite those  
 2 prohibitions and that requirement, she expressly blessed the racial injustice protests that followed  
 3 the death of George Floyd and Jacob Blake (and others) – even though the gatherings far exceeded  
 4 60 individuals and included many who went without face masks.<sup>112</sup>

5 87. On May 29, 2020, as many as 1,000 protesters demonstrated in Silicon Valley, some of  
 6 whom went so far as to block traffic on Highway 101 and perpetrate violence. There were 327 San  
 7 Jose police officers assigned to the protest, along with 13 outside agencies and 91 outside agency  
 8 personnel. Officials say 38 people were arrested.”<sup>113</sup> In addition to risking contagion from the  
 9 crowd, protesters who were detained or arrested were also exposed to a number of police officers

10  
 11 <sup>111</sup> The *Mandatory Directive: Gatherings*, July 13, 2020, as updated September 5, 2020, provides, in pertinent part, as follows:

12 A “gathering” is an event, assembly, meeting, or convening that brings together multiple people from  
 13 separate households in a single space, indoors or outdoors, at the same time and in a coordinated  
 fashion—like a wedding, banquet, conference, religious service, festival, fair, party, performance,  
 barbecue, **protest**, or picnic.

\* \* \* \* \*

14 Everyone must wear a face covering at all times during a gathering.  
 Exhibit 63 hereto incorporated herein (emphasis added), pp. 3-5.

15 <sup>112</sup> SCCPH issued a press release on June 1, 2020, in which it stated, in part:

16 The County of Santa Clara Public Health Department recognizes that peaceful protest in response to  
 17 the pain, anger and mourning due to deeply rooted inequities and systemic racism is a fundamental  
 right that is critical to the health of our democracy. As residents of the county exercise this right, we  
 respectfully remind everyone that our community is still facing a health crisis as COVID-19 is still  
 18 present. We urge those engaging in peaceful protest to keep their own health and that of others in  
 mind by following important practices, such as using face coverings and, to the extent possible,  
 maintaining social distancing.

19 Exhibit 75 hereto incorporated herein.

20 <sup>113</sup> Lauer, *San Jose: Hundreds Protest Killing of George Floyd, Stop Traffic*, San Jose Spotlight, May 29, 2020.  
 Exhibit 104 hereto and incorporated herein. Associated Press, *Hundreds Block 101 Freeway in Silicon Valley over*  
 21 *Floyd Killing*, KTLA5, May 29, 2020. Exhibit 105 hereto and incorporated herein. KTVU Staff, *Death of George Floyd*  
*Sparks Bay Area Protests*, Fox2 KTVU, May 30, 2020. Exhibit 106 hereto and incorporated herein. *George Floyd*  
 22 *Death: 38 People Arrested, Several Officers Injured in Violent San Jose Protests*, ABC7News, May 30, 2020,  
 Rodriguez, *38 People Arrested Following George Floyd Protest in San Jose, Officials Say*, KRON4, May 30, 2020.  
 Exhibit 107 hereto and incorporated herein. *San Jose Police Declare George Floyd Protest an Unlawful Assembly, Fire*  
 23 *Tear Gas into Crowd*, CBSSF Bay Area, May 30, 2020. Exhibit 109 hereto and incorporated herein. LaPlante and  
 Johnson, *San Jose Imposes a Curfew, Hundreds Protest George Floyd Death for Third Day*, San Jose Spotlight, May  
 24 31, 2020. Exhibit 110 hereto and incorporated herein. Staff Report, *Protestors Rally in Downtown Gilroy Following*  
*Death of George Floyd*, Gilroy Dispatch, June 1, 2020. Exhibit 111 hereto and incorporated hereto.

1 who did not wear face masks.<sup>114</sup>

2 88. On June 5, 2020, a demonstration on the steps of Santa Clara City Hall brought together  
3 approximately 200 protesters without any police presence.<sup>115</sup>

4 89. On June 6, 2020, hundreds of protesters demonstrated in front of San Jose City Hall.<sup>116</sup>

5 90. On June 8, 2020, hundreds of protesters demonstrated in front of the Santa Clara County  
6 Sheriff's office in Cupertino.<sup>117</sup>

7 91. Also on June 8, 2020, at San Jose City Hall, hundreds of protesters either took a knee or laid  
8 on their backs for 8 minutes and 46 seconds, the same amount of time former Minneapolis police  
9 officer Derek Chauvin kept his knee on George Floyd's neck, killing him.<sup>118</sup>

10 92. On June 12, 2020, protesters met at Hoover Park in Cupertino, where 10 African-American  
11 speakers discussed experiences with racial discrimination that they and their family members have  
12 faced. Afterward, some two thousand protesters marched to the West Valley Division of the Santa  
13 Clara County Sheriff's Office to demonstrate before returning to the park for an open microphone  
14 where protestors shared their experiences."<sup>119</sup>

15 93. On June 25, 2020, the Santa Clara County Office of the District Attorney declined to  
16

17  
18 <sup>114</sup> Hase, *Health Officers Urge Protesters to Get Tested for COVID-19*, San Jose Inside, June 1, 2020. Exhibit 112  
hereto incorporated herein.

19 <sup>115</sup> *Intimate Black Lives Matter Protest Held in Santa Clara*, SV Voice, June 8, 2020. Exhibit 117 hereto  
incorporated herein.

20 <sup>116</sup> West and Freimarck, *Protesters participate in peaceful Black Lives Matter 'die-in' protest hosted by local*  
21 *NAACP*, La Voz, June 6, 2020. Exhibit 115 hereto incorporated herein.

22 <sup>117</sup> Staff Writer, *Hundreds in Cupertino Protest Police Brutality*, Cupertino Today, June 8, 2020. Exhibit 118  
hereto incorporated herein.

23 <sup>118</sup> Trujano and Bartlett, *Seventh Day of George Floyd Protests in San Jose Remains Peaceful, For the Most Part*,  
SJSU News, June 8, 2020. Exhibit 119 hereto incorporated herein.

24 <sup>119</sup> Ali-Ahmad, *Nearly Two Thousand Protestors Gather in Cupertino*, Estoque, June 12, 2020. Exhibit 121  
incorporated herein.



1 prosecute protestors for non-violent COVID-19 violations during the George Floyd protests.<sup>120</sup>

2 94. On July 20, 2020, thousands of protesters gathered in the County to protest racial injustice.  
3 There was no enforcement of the Mandatory Directive: Gatherings against the protesters.<sup>121</sup>

4 95. On August 16, 2020, community members supported a hunger strike by inmates in the Santa  
5 Clara County jail system. The photograph that accompanied the article shows more than one  
6 protester without a mask.<sup>122</sup>

7 96. On August 28, 2020, approximately 100 protesters gathered at the home of Sam Liccardo,  
8 mayor of San Jose, where they painted graffiti on the walls of his home. San Jose Police later  
9 arrested a single individual because of a separate vandalism incident at City Hall.<sup>123</sup>

10 97. On September 3, 2020, the City of San Jose failed to cite protesters for curfew violations  
11 during protests.<sup>124</sup>

12 98. No one in law enforcement has taken any steps to limit the size of peaceful protests or to  
13 ensure protesters wear masks. In other words, the County enforces its orders selectively, levying  
14 hundreds of thousands of dollars in fines against churches the congregations of which gather to  
15 worship while allowing hundreds of protesters to gather without repercussion.

16 99. Thus, at the time Cody was supporting the “fundamental right” to gather in protest of racial  
17 injustice, though it was a violation of her May 18, 2020, order, she had closed all places of worship  
18

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19 <sup>120</sup> Wadsworth, *DA Won't Prosecute Curfew Violators—But San Jose Might*, San Jose Inside, June 25, 2020..  
Exhibit 123 hereto incorporated herein.

20 <sup>121</sup> King, *Silicon Valley Reps Demand Answers About Government Surveillance at Protests*, San Jose Spotlight,  
21 July 20, 2020. Exhibit 125 hereto incorporated herein.

22 <sup>122</sup> Salonga, *Rally Supports Inmates' Hunger Strike Over Coronavirus at Santa Clara County Jails*, The Mercury  
News, August 16, 2020. Exhibit 126 hereto incorporated herein.

23 <sup>123</sup> Green, *Jacob Blake Shooting Sparks Protests in San Jose, Oakland*, The Mercury News, August 31, 2020.  
Exhibit 127 hereto incorporated herein.

24 <sup>124</sup> Wadsworth, *San Jose Quietly Drops Curfew Citations Amid Claims of Selective Enforcement*, Inside San Jose,  
25 Sept 3, 2020. Exhibit 128 hereto incorporated herein.

1 for indoor gathering and had limited outdoor gathering for religious purposes to 25 people.

2 The Science Behind COVID-19

3 100. The science of COVID-19 is much better understood today than it was when the disease first  
4 arrived on our shores ten months ago. Scientists have identified the populations most at risk of  
5 serious injury and/or death from the disease, they are developing new treatments and mitigation  
6 protocols, and they are working on a vaccine. Mitigation measures such as wearing face coverings,  
7 physical distancing, disinfecting surfaces, washing hands, and using hand sanitizer have proven to  
8 be quite effective at slowing the spread of the disease and in reducing the risk of exposure.

9 101. In a peer-reviewed study of the COVID-19 infection fatality rate published by the World  
10 Health Organization (“WHO”), the researcher projected that, as of September 12, 2020, over half a  
11 billion people have been infected and most locations probably have an infection fatality rate less  
12 than .2% (two-tenths of a percent). Further, with appropriate, precise, non-pharmacological  
13 measures to protect high-risk vulnerable populations and settings selectively, the infection fatality  
14 rate may be brought even lower.<sup>125</sup> The study author’s conclusion about the fatality rate is markedly  
15 lower than the rate predicted at the outset of the infection. In other words, now that we have  
16 implemented measures to protect the most vulnerable among us, the pandemic is no longer as  
17 calamitous as once anticipated.

18 102. On October 4, 2020, public health experts and medical practitioners joined together to adopt  
19 a formal declaration that public health measures should refocus on specific protections for the  
20 vulnerable population, immediately allow society to return to normal, with hygiene measures, and  
21 warn that shutting society down “will cause irreparable damage with the underprivileged

22  
23  
24 <sup>125</sup> Ioannidis, *Infection Fatality Rate of COVID-19 inferred from Seroprevalence Data*, Bulletin of the World  
Health Organization, October 14, 2020 (online). Exhibit 95 hereto incorporated herein.

1 disproportionately harmed.”<sup>126</sup>

2 103. On October 11 and 15, 2020, WHO reiterated its position that world leaders not depend on  
3 lockdowns to control COVID-19 due to their “devastating global impact,” stressing a balance  
4 between the needs of society to reopen and a reduction of the number of cases:

5 We really do have to learn how to coexist with this virus in a way that doesn’t  
6 require constant closing down of economies... robust defenses against the virus must  
7 be put in place... such as testing, contact tracing and isolation. It also involves  
communities adhering to public health guidelines such as wearing masks, physical  
distancing and practicing good hygiene.<sup>127</sup>

8 104. On September 8, 2020, Lund University in Sweden published a study in Science Daily as a  
9 result of which it concluded “[s]inging doesn’t need to be silenced.”<sup>128</sup> Aerosol researchers studied  
10 the amount of particles we emit when we sing. They found when the singers wore a simple face  
11 mask, it “caught most of the aerosols and droplets.” Jakob Löndahl, a senior researcher in aerosol  
12 technology at Lund University opined that “[s]inging does not need to be silenced, but presently it  
13 should be done with appropriate measures to reduce the risk of spreading infection.”

14 105. The CDC Considerations for Events and Gatherings do not suggest singing not be allowed.  
15 They agree with the conclusion of the Lund University researchers in stating that “[m]asks are  
16 strongly encouraged in settings where individuals might raise their voice *e.g.*, shouting, chanting,  
17  
18

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19 <sup>126</sup> The scientists and medical practitioners included Dr. Martin Kulldorff, professor of medicine at Harvard  
20 University, a biostatistician, and epidemiologist with expertise in detecting and monitoring infectious disease outbreaks  
and vaccine safety evaluations; Dr. Sunetra Gupta, professor at Oxford University, an epidemiologist with expertise in  
immunology, vaccine development, and mathematical modeling of infectious diseases; and Dr. Jay Bhattacharya,  
21 professor at Stanford University Medical School, a physician, epidemiologist, health economist, and public health  
policy expert focusing on infectious diseases and vulnerable populations As of the filing of this complaint, over 12,000  
medical and public health scientists and almost 35,000 medical practitioners have signed onto the declaration. Exhibit  
22 98 hereto incorporated herein.

23 <sup>127</sup> Bacon, *WHO Discourages Lockdowns as US Hospitalizations Climb; 11 States set Records for new COVID-19  
Cases*, USA Today, Oct. 11, 2020. Exhibit 133 hereto incorporated herein.

24 <sup>128</sup> Lund University, *Could Singing Spread COVID-19?*, Science Daily, September 8, 2020. Exhibit 93 hereto  
25 incorporated herein.

singing.”<sup>129</sup> Likewise, the CDC does not recommend against singing for communities of faith.<sup>130</sup>

106. John Schwartzberg, clinical professor emeritus of infectious diseases and vaccinology at University of California, Berkeley, confirmed that simple conduct measures can mitigate risk indoors. Maintaining six feet of space between individuals and wearing a mask renders a ride on mass transit a medium-risk activity whereas riding in a crowd with no mask would be a “high-risk nightmare.” He noted as well that the risk depends on each individual’s health and susceptibility to COVID-19.<sup>131</sup>

107. On October 30, 2020, a group of German scientists published, “The Risk of Indoor Sports and Culture Events for the Transmission of Covid-19 (Restart-19),” which studied “mass gathering events (“MGE”)” that were banned worldwide “as they are supposed to pose a considerable risk for transmission of COVID-19.” They “investigated transmission risk of SARS-CoV-2 by droplets and aerosols during an experimental indoor MGE (using N95 masks and contact tracing devices)” and stated “[o]verall, the expected additional effect of indoor MGE on burden of infections is low if hygiene concepts are applied and adequate ventilation exists.” The One Sentence Summary was that: “Seated indoor events, when conducted under hygiene precautions and with adequate ventilation have small effects on the spread of COVID-19.”<sup>132</sup>

108. The Mayo Clinic has found that “[m]ost people who have coronavirus disease 2019 (COVID-19) recover completely within a few weeks. . . . Older people and people with many

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<sup>129</sup> Centers for Disease Control and Prevention, *Considerations for Events and Gatherings*, October 29, 2020. copy Exhibit 5 hereto incorporation herein.

<sup>130</sup> Centers for Disease Control and Prevention, *Considerations for Communities of Faith*, October 29, 2020. Exhibit 6 hereto incorporated herein.

<sup>131</sup> Savidge, *How Risky is My BART Ride? Coronavirus Remakes Bay Area Public Transit*, The Mercury News, June 25, 2020. Exhibit 124 hereto incorporated herein.

<sup>132</sup> Moritz, Gottschick, Horn, *et al.*, *The Risk of Indoor Sports and Culture Events for the Transmission of COVID-19 (Restart-19)*, medRxiv, November 3, 2020. Exhibit 97 hereto incorporated herein.

1 serious medical conditions are the most likely to experience lingering COVID-19 symptoms. The  
 2 most common signs and symptoms that linger over time include: fatigue, cough, shortness of breath,  
 3 headache, joint pain.”<sup>133</sup>

#### 4 THE SHUTDOWN ORDERS

5 109. On the grounds set forth above, plaintiffs challenge the following orders, ordinances, and  
 6 advisories issued by the state:

- 7 a. Newsom Executive Order No. 33-20, March 19, 2020. Exh. 16.<sup>134</sup>
- 8 b. CA Statewide Public Health Officer Order, August 28, 2020. Exh. 25.<sup>135</sup>

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10 <sup>133</sup> Mayo Clinic Staff, *COVID-19 (coronavirus): Long-Term Effects*, Mayo Clinic. Exhibit 96 hereto incorporated  
 11 herein.

12 <sup>134</sup> The Executive Order provides, in pertinent part:

13 [A]ll residents are directed to immediately heed the current State public health directives, which I  
 14 ordered the Department of Public Health to develop for the current statewide status of COVID-19. . . .  
 15 Those directives follow:

#### 16 ORDER OF THE STATE PUBLIC HEALTH OFFICER 17 March 19, 2020

18 To protect public health, I as State Public Health Officer and Director of the California Department of  
 19 Public Health order all individuals living in the State of California to stay home or at their place of  
 20 residence except as needed to maintain continuity of operations of the federal critical infrastructure  
 21 sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In  
 22 addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may  
 23 designate additional sectors as critical in order to protect the health and well-being of all Californians.  
 24 . . .

25 <sup>135</sup> The order provides, in relevant part:

1. The updated framework for reopening, which shall be known as California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe [aka Blueprint for a Safer Economy], will rely on a set of Tiers corresponding to specific epidemiological profiles based on indicators of disease burden including case rates per capita and percent of positive covid-19 tests and proportion of testing and other covid-19 response efforts addressing the most impacted populations within a county. For each progressive Tier, this framework will permit a broader range of reopening guided by risk-based criteria pertinent to each sector. I may modify the epidemiological criteria for each Tier as well as the sectors, businesses, establishments, or activities within the Tiers as necessary based on the latest available public health information and research to protect public health and safety. The up-to-date Tier profiles and those sectors, businesses, establishments, or activities that are permitted to open in each Tier will be posted (along with necessary modifications), at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID19/COVID19CountyMonitoringOverview.aspx>.

c. CA Blueprint for a Safer Economy. Exh. 26-1.<sup>136</sup>

d. CA Blueprint for a Safer Economy, Activity and Business Tiers. Exh. 27.<sup>137</sup>

e. CA Essential Workforce. Exh. 28.<sup>138</sup>

f. *CA COVID-19 INDUSTRY GUIDANCE: Places of Worship and Providers of Religious Services and Cultural Ceremonies*, July 29, 2020. Exh. 32.<sup>139</sup>

2. . . .

3. Conversely, a local health jurisdiction must also close sectors according to their respective county's Tier consistent with the timeline and procedures set forth in California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe.

<sup>136</sup> The Blueprint provides, *inter alia*:

California has a blueprint for reducing COVID-19 in the state with revised criteria for loosening and tightening restrictions on activities. Every county in California is assigned to a tier based on its test positivity and adjusted case rate for tier assignment.

<sup>137</sup> Blueprint Activity and Business Tiers mandates the following with respect to places of worship:

Widespread – Tier 1	Substantial – Tier 2	Moderate – Tier 3	Minimal – Tier 4
Outdoor Only with modifications	Open indoors with modifications  Max 25% capacity or 100 people, whichever is fewer	Open indoors with modifications  Max 50% capacity or 200 people, whichever is fewer	Open indoors with modifications  Max 50% capacity

<sup>138</sup> The Essential Workforce provides, in relevant part:

In accordance with this order, the State Public Health Officer has designated the following list of "Essential Critical Infrastructure Workers" to help state, local, tribal, and industry partners as they work to protect communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security.

\* \* \* \* \*

8. Government Operations and Other Community-Based Essential Functions

\* \* \* \* \*

16. Clergy for essential support and faith-based services that are *provided through* streaming or other technologies that support physical distancing and state public health guidelines, (Emphasis added.)

<sup>139</sup> The Industry Guidance provides, in pertinent part:

Places of worship should continue to provide services through alternative methods (such as via internet live and/or recorded streaming, telephone, drive-in, etc.) whenever possible.

\* \* \* \* \*

Children should remain in the care of those in their household unit and not interact with children of other parties at any time while visiting facilities. Close play areas and discontinue activities and services for children where physical distancing of at least six feet cannot be maintained.

g. *Guidance for the Prevention of COVID-19 Transmission for Gatherings*, November 13, 2020. Exh. 40.<sup>140</sup>

h. *CA COVID-19 General Checklist for Places of Worship and Providers of Religious Services and Cultural Ceremonies*, July 1, 2020. Exh. 41.<sup>141</sup>

110. On the grounds set forth above, plaintiffs challenge the following orders, ordinances, and advisories issued by the County:

a. SCC Ordinance NS-9.21, adopted August 11, 2020. Exh. 49.

b. SCC Order of the Health Officer of the County of Santa Clara Establishing Revised Mandatory Risk Reduction Measures Applicable to all Activities and Sectors to Address

\* \* \* \* \*

Remove from service or find low-community touch alternatives for communal/religious water containers such as fonts, sinks, and vessels.

\* \* \* \* \*

Discontinue singing (in rehearsals, services, etc.), chanting, and other practices and performances where there is increased likelihood for transmission from contaminated exhaled droplets.

<sup>140</sup> This Guidance provides, in pertinent part:

People who wish to engage in political, artistic, or other forms of expression or in religious expression and practice are strongly encouraged to find means of expression that do not involve in-person gatherings or to wait to gather in person until those activities are permitted by the Blueprint for a Safer Economy. However, because this guidance offers safer ways to operate in the colder climate, with higher likelihood of rain, associated with the time of year we now enter, the safeguards in this guidance apply as well to activities protected by the First Amendment and those activities are not prohibited if conducted in accordance with this guidance.

\* \* \* \* \*

All persons planning to host or participate in a private gathering, as defined above, must comply with the requirements identified below . . . .

1. Attendance

a. Gatherings that include more than 3 households are prohibited.

\* \* \* \* \*

2. Location: Gatherings Must be Outdoors for Counties in the Purple Tier

a. Gatherings that occur outdoors are significantly safer than indoor gatherings. All gatherings must be held outside in the Purple Tier, and indoor gatherings are strongly discouraged in Red, Orange and Yellow Tiers.

<sup>141</sup> The Checklist provides, in relevant part:

Provide services through alternative methods such as internet streaming, telephone, drive-in, etc.

Remove or find low-community-touch alternatives for communal/religious water containers.



the COVID-19 Pandemic, October 5, 2020. Exh. 62.<sup>142</sup>

c. *SCC Mandated Social Distance Protocol*. Exh. 70.

d. *SCC Mandatory Directive: Gatherings*, July 14, 2020 (revised November 16, 2020).

Exh. 70-3.<sup>143</sup>

e. *SCC Mandatory Directive: Capacity Limitations*. November 15, 2020 (revised

November 16, 2020). Exh. 70-2.<sup>144</sup>

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<sup>142</sup> The Order states, in relevant part:

Participants in gatherings of any size must adhere to Health Officer directives applicable to gatherings, including restrictions on the size of gatherings, and also the Social Distancing and Face Covering Requirements . . . .

\* \* \* \* \*

c.1. All businesses must prepare, submit to the County, and implement a "Social Distancing Protocol" for each facility or worksite at which any personnel or members of the public may be present, using the form identified in Paragraph 3 below. The Social Distancing Protocol must confirm that the business is achieving the applicable requirements listed in that form, which include important mandates regarding worker and customer safety.

\* \* \* \* \*

3. The Social Distancing Protocol must be completed using the fillable webform and submitted to the County Public Health Department at [www.COVID19Prepared.org](http://www.COVID19Prepared.org). All Social Distancing Protocols will be stored and available in a publicly accessible database.

4. The Social Distancing Protocol must be completed by a person authorized to complete and sign it on behalf of the business, and it must be signed under penalty of perjury. All businesses must provide evidence of implementation of their Social Distancing Protocol to any authority enforcing this Order upon demand.

\* \* \* \* \*

**13. Prohibited Business Operations and Activities.** In addition to complying with the State Order's prohibitions on certain business operations and activities, businesses and individuals must comply with any directives or orders of the Health Officer suspending certain business operations or activities or requiring specified facilities to close.

<sup>143</sup> This Directive provides, among other things:

The maximum number of people allowed at an outdoor gathering is specified in the Mandatory Directive on Capacity Limitations. This includes everyone present, such as hosts, workers, and guests. The space must be large enough so that everyone at a gathering can maintain at least 6-foot social distance from anyone (other than people from their own household).

Indoor gatherings may not be allowed depending on the County's current tier under the State's Blueprint for a Safer Economy. See the "State Gatherings Rules" box at the top of this Directive for information on current State rules. When indoor gatherings are allowed, the maximum number of people allowed at an indoor gathering is specified in the Mandatory Directive on Capacity Limitations. This includes everyone present, such as hosts, workers, and guests.

<sup>144</sup> With respect to places of worship, this Directive Provides, in pertinent part:

1.a. Outdoor gatherings may not exceed 200 people under any circumstances.

f. *SCC Requirements for all Businesses*. Exh. 81.<sup>145</sup>

111. On the grounds set forth above, plaintiffs challenge any orders, ordinances, advisories and/or policies of enforcement that supersede or modify the foregoing challenged orders insofar as they apply to or restrict the rights of religious assembly, speech, and/or practices.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF**

#### **FREEDOM OF ASSEMBLY**

(All Plaintiffs against all Defendants)

(42 U.S.C. § 1983)

Plaintiffs hereby incorporate the foregoing allegations as though fully set forth herein.

112. The right to peacefully assemble is a right protected and guaranteed by the First Amendment of the United States Constitution. The liberties under the First Amendment apply to the states and their political subdivisions through the Fourteenth Amendment.

113. Defendants, and each of them, and the Challenged Orders, prohibit, restrict, burden and chill Plaintiffs' right to assemble, speak and practice religion in places of worship by prohibiting and/or restricting religious assembly and practice including sung expression in praise and worship to God.

114. When the state prohibits assembly the state silences the voice of the church, separate pastors from believers, abolishes faith practices in the church, stops church growth, and prevents prayer, healing, and salvation for lost souls and the sick who cannot meet in the church.

115. Plaintiffs and the members of their congregations have no adequate remedy at law.

WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth

#### 2. Indoor capacity limitations

<b>Business/Entity/Activity Type</b>	<b>Capacity Limitations</b>
Gatherings (e.g., moving showings, political events, weddings, funerals, worship services)	Indoor operations prohibited

<sup>145</sup> This document provides, in relevant part:

Open outdoors up to 200 people (follow all County Health Officer Order requirements . . . .

below.

**SECOND CLAIM FOR RELIEF**  
**FREE EXERCISE OF RELIGION**  
(All Plaintiffs Against all Defendants)  
(42 U.S.C. § 1983)

Plaintiffs hereby incorporate the foregoing allegations as though fully set forth herein.

116. The right to free exercise of religion is a right protected and guaranteed by the First Amendment of the United States Constitution. The liberties under the First Amendment apply to the states and their political subdivisions through the Fourteenth Amendment. The right to free exercise of religion includes the right to assemble in the Lord's house to practice religion, sing praise and worship God, prayer, the sacraments of holy communion and baptism, teaching the word of God and other faith practices described herein. The right includes the right to be free of state imposed "alternative" services and religious practices and requiring Clergy to perform essential faith based services virtually while other essential secular workers are allowed to perform services in person.

117. Defendants, and each of them, and the Challenged Orders, prohibit, restrict, burden and chill Plaintiffs' right to free exercise of religion in places of worship by prohibiting and/or restricting religious assembly and practice including sung expression.

118. When the state prohibits assembly and sung worship the state abolishes faith practices in the church. When the state dictates alternative religious practices the state impinges on the free exercise of religion.

119. Plaintiffs and the members of their congregations have no adequate remedy at law.

WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth below.

**THIRD CLAIM FOR RELIEF**  
**EQUAL PROTECTION**  
(All Plaintiffs Against all Defendants)  
U.S.C. § 1983)

The foregoing allegations are incorporated as though fully set forth herein.

120. The right to equal protection under the law is a right protected and guaranteed by the First Amendment of the United States Constitution. The liberties under the First Amendment apply to the states and their political subdivisions through the Fourteenth Amendment.

121. Defendants, and each of them, and the Challenged Orders, prohibit, restrict, burden and chill Plaintiffs' Church Rights by prohibiting and/or restricting the exercise of constitutional rights.

122. Defendants have not applied the same laws, orders, regulations, rules and guidelines or enforcement thereof to comparator gatherings in airport terminal gates, mass transit, political or race demonstrations, youth activities, and other group activities.

123. The state has included "Clergy for essential support and faith-based services" in its designation of "Essential Critical Infrastructure Workers" that "work to protect communities, while ensuring continuity of functions critical to public health and safety . . .," yet the state has allowed in person secular workforces but prohibited in person religious workforces.

124. Religion is a suspect class to which plaintiffs and the members of their congregations belong. Defendants have created a religion-based classification to the detriment of plaintiffs and the members of their congregations.

125. Plaintiffs and the members of their congregations have no adequate remedy at law.

WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth below.

**FOURTH CLAIM FOR RELIEF**  
**FREEDOM OF SPEECH**  
(42 U.S.C. § 1983)  
(All Plaintiffs Against all Defendants)

Plaintiffs incorporate the foregoing allegations as though set forth in full herein.

126. The right to free speech is a right protected and guaranteed by the First Amendment of the United States Constitution. The liberties under the First Amendment apply to the states and their political subdivisions through the Fourteenth Amendment.

127. Religious assembly is an expression based gathering that is spoken, read, sung, recited and heard such expression includes prayer, worship, praise, thanksgiving, rejoicing, adoration, confession, testifying, witnessing, intercession, comfort, supplication, teaching and preaching and hearing the Word of God.

128. Defendants, and each of them, and the Challenged Orders, prohibit, restrict, burden and chill Plaintiffs' right to free speech in places of worship by prohibiting and/or restricting religious assembly and practice including sung expression.

129. An assembly to practice religion and an assembly to promote a political campaign or protest racial or social injustice or youth activities for education and classes are all to some extent expression-based gatherings.

130. By enacting and enforcing the Challenged Orders that prohibit or restrict or burden certain types of religious expression such as sung expression, and that do not similarly burden non-religious comparator expression-based gatherings, defendants have presented a content and/or viewpoint-based restriction on speech.

131. When the state prevents assembly in places of worship or prohibits sung worship in places of worship the state silences the voice of the church and its members to sing, speak, teach, preach, and pray.

132. Plaintiffs and the members of their congregations have no adequate remedy at law.

1 WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth  
2 below.

3 **FIFTH CLAIM FOR RELIEF**  
4 **UNREASONABLE SEIZURE OF PROPERTY**  
5 (All Plaintiffs Against all Defendants)  
6 (43 U.S.C. § 1983)

7 Plaintiffs incorporate the foregoing allegations as though set forth in full herein.

8 133. The right to be secure against unreasonable seizure of property including unreasonable  
9 control over and interference with Plaintiffs' possessory interest in church property is a right  
10 protected and guaranteed by the Fourth Amendment of the United States Constitution. The liberties  
11 under the Fourth Amendment apply to the states and their political subdivisions through the  
12 Fourteenth Amendment.

13 134. Defendants, and each of them, and the Challenged Orders, prohibit, restrict, burden and chill  
14 Plaintiffs' possessory interest in and right to possess and control religious buildings, places of  
15 worship and the property on which they are situated throughout the state and county.

16 135. Plaintiffs and the members of their congregations have no adequate remedy at law.

17 WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth  
18 below.

19 **SIXTH CLAIM FOR RELIEF**  
20 **PRIVILEGES & IMMUNITIES**  
21 (All Plaintiffs Against all Defendants)  
22 (43 U.S.C. § 1983)

23 Plaintiffs incorporate the foregoing allegations as though set forth in full herein.

24 136. The County has enacted Ordinance No. NS-9.291 (the "Ordinance").

25 137. The Ordinance conflicts with the California Emergency Services Act (the "Act"). Cal. Gov.  
C. § 8550, et seq. Section 8665 of the Act limits penalties at \$1,000 and 6 months in jail, if  
convicted. The Ordinance, to the contrary, assesses fines up to \$5,000 and imposes sentences up to

1 one year in jail. The Ordinance also assesses administrative costs, late penalties, and non-reciprocal  
2 attorneys' fees.

3 138. The Ordinance conflicts with County Ordinance A1-28 (general penalty for violation  
4 declared a misdemeanor). That ordinance provides any person convicted of a misdemeanor under  
5 any provision of the county's code shall be punishable by a fine not more than \$1,000,  
6 imprisonment in the county jail for a period not to exceed six months, or both. The Ordinance, to  
7 the contrary, assesses fines up to \$5,000 and imposes sentences up to one year in jail. The  
8 Ordinance also assesses administrative costs, late penalties, and non-reciprocal attorneys' fees.

9 139. The Ordinance conflicts with County Ordinance A1-42 (civil actions and penalties for  
10 nuisance abatement). That ordinance limits the civil penalty for the first violation of the nuisance  
11 abatement ordinance to \$2,500 per day or portion of a day during which the public nuisance exists.  
12 The Ordinance, to the contrary, assesses fines up to \$5,000 and imposes sentences up to one year in  
13 jail. The Ordinance also assesses administrative costs, late penalties, and non-reciprocal attorneys'  
14 fees.

15 140. The Ordinance provides for notice of a violation via electronic mail, a 10-day abbreviated  
16 appeal period, and a "prompt" administrative hearing with no definition of the term "prompt."

17 141. The Ordinance was enacted for an indefinite period with no expiration or termination date  
18 and does not specify the laws, orders, guidance, or protocols it purports to enforce or those of the  
19 myriad provisions that are subject to punishment.

20 142. The Ordinance vests broad, unchecked, "sole discretion" in "Enforcement Officers" as to (a)  
21 whether a violation has occurred, (b) whether to issue a Notice of Violation or take any other action,  
22 (c) whether to provide a grace period to correct an alleged violation, (d) making a determination  
23 whether a violation has been corrected, and (e) how to gain compliance.

24 143. The Ordinance does not require disclosure of the identity of the complaining party, which is  
25



1 kept confidential, and the complaint is not made under penalty of perjury. The Ordinance denies the  
 2 right to cross-examine the accuser for personal knowledge, bias, credibility, or malice. The  
 3 Ordinance eliminates formal rules of evidence; in fact, it does not require reliable evidence or any  
 4 corroboration. It also shifts the burden to the citizen to prove the correction. The Hearing Officer is  
 5 selected and paid for by the County and he or she is advised *ex parte* by County Counsel. The  
 6 decision of the Hearing Officer is final without any right of appeal. The Ordinance does not have a  
 7 reciprocal attorneys' fees clause if the citizen prevails.

8 144. The Fourteenth Amendment of the Constitution provides that "[n]o state shall make or  
 9 enforce any law which shall abridge the privileges or immunities of citizens of the United States."

10 145. The Ordinance violates the Fourteenth Amendment guarantee of privileges and immunities  
 11 in that:

12 a. By allowing the County to control all three branches – judicial (Hearing Officer,  
 13 executive (Enforcement Officer), and legislative (Public Health Officer) – the County has  
 14 denied citizens the checks and balances and separation of powers required for due process.

15 b. The Ordinance deprives citizens of life, liberty, or property without due process of  
 16 law, contrary to the Fifth Amendment of the Constitution.

17 c. The Ordinance is vague, overbroad, and indefinite, thus depriving citizens of due  
 18 process of law, contrary to the Fifth Amendment.

19 d. The Ordinance does not guarantee citizens a speedy and public trial, contrary to the  
 20 Sixth Amendment.

21 e. The Ordinance deprives citizens of the right to a jury trial guaranteed by the Sixth  
 22 Amendment of the Constitution.

23 f. The Ordinance does not require the County to inform citizens of the nature and cause  
 24 of the accusation against them, contrary to the Sixth Amendment of the Constitution.

g. The Ordinance does not require citizens to be confronted with the witnesses against them, contrary to the Sixth Amendment.

h. The Ordinance deprives citizens of the right to trial by jury even though penalties imposed are a minimum of \$5,000, contrary to the Seventh Amendment of the Constitution.

i. The Ordinance imposes criminal penalties without requiring the County to prove alleged offenses beyond a reasonable doubt, contrary to the 14<sup>th</sup> Amendment of the Constitution.

146. Plaintiffs and the members of their congregations have no adequate remedy at law.

WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth below.

**SEVENTH CLAIM FOR RELIEF  
DECLARATORY RELIEF**

(All Plaintiffs Against All Defendants)  
(28 U.S.C. § 2201, FRCP Rule 59)

The foregoing allegations are incorporated as though fully set forth herein.

147. A controversy has arisen and now exists between the parties that is ripe for an expedited summary proceeding, justifying docketing the case for early hearing, with declaratory judgment by the Court as to the Parties' rights and obligations towards each other that will "terminate the controversy" giving rise to the proceeding.

148. This case involves issues of constitutional law on undisputed or relatively undisputed facts related to ongoing religious activities of Plaintiffs and related challenged orders of Defendants. This action is ripe for a summary proceeding and justifying docketing the case for early hearing as on a motion.

149. Plaintiffs contend that defendants' shutdown orders closing and restricting religious gatherings have caused, and are continuing to cause harm to the souls and mental health of people that outweighs the potential risk of spread of Covid-19, which can be mitigated by simple personal

1 conduct measures during religious gatherings, and Plaintiffs contend that defendants have  
 2 unlawfully suspended and deemed the exercise of constitutional rights to be nonessential activities  
 3 and/or non-critical or a public nuisance to our society, and defendants have criminalized and/or  
 4 punished and/or chilled the exercise of constitutional rights, and have unlawfully banned religious  
 5 practices of Plaintiffs and their congregations including sung worship, and defendants have  
 6 unlawfully dictated new alternative religious practices to churches and congregations, and  
 7 defendants have unreasonably seized indefinite control of places of worship without due process or  
 8 compensation, and have imposed special burdens and restrictions and closures on religious  
 9 gatherings without equal protection under the law applied to and/or enforced against similar secular  
 10 congregating activities of comparator gatherings such as airports, mass transit, protests, and secular  
 11 children and youth education, programs and activities, and Plaintiffs contend that the challenged  
 12 order are facially or as applied unconstitutional and void for vagueness, uncertainty, indefinite  
 13 duration, and for infringement and/or chilling the exercise of Plaintiffs' rights under the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>,  
 14 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and/or 14<sup>th</sup> Amendments to the United States Constitution.

15 150. Plaintiffs are informed and believe that defendants dispute Plaintiffs' contentions.

16 151. Plaintiffs and the members of their congregations have no adequate remedy at all.

17 WHEREFORE, plaintiffs pray judgment against defendants, and each of them, as set forth  
 18 below.

### 19 PRAYER AND DEMAND FOR RELIEF

20 WHEREFORE, plaintiffs on behalf of their church and congregations pray for relief as set  
 21 forth below.

22 1. Temporary restraining order, preliminary injunction, and permanent injunction to enjoin  
 23 defendants, and their agents, from enforcing the challenged orders against plaintiffs and their  
 24 pastors, congregations and places of worship, except to the same extent applied to and enforced  
 25

1 against the congregating activities of comparator gatherings, including at airports, mass transit,  
2 peaceful demonstrations, and secular children and youth groups as applicable.

3 2. An order and declaratory judgment declaring each of the challenged orders and ordinances  
4 are unconstitutional, facially and/or as applied, under the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and/or 14<sup>th</sup>  
5 Amendments of the United States Constitution and declaring as follows:

- 6 (a) Defendants' orders have caused, and are continuing to cause, harm to the minds, souls  
7 and mental health and well-being of people, which harm outweighs the potential risk of  
8 spread of Covid-19, which can be mitigated by simple personal conduct measures during  
9 religious gatherings;
- 10 (b) Defendants' orders have unlawfully suspended and deemed constitutional rights to be  
11 nonessential activities and/or non-critical or a public nuisance to our society;
- 12 (c) Defendants have criminalized, punished and/or chilled the exercise of constitutional  
13 rights;
- 14 (d) Defendants have unlawfully banned religious practices of Plaintiffs and their  
15 congregations including worship;
- 16 (e) Defendants have unlawfully dictated new alternative religious practices to churches,  
17 clergy and congregations;
- 18 (f) Defendants have unreasonably seized control of places of worship for an indefinite  
19 period without due process or compensation,
- 20 (g) Defendants have imposed special burdens and restrictions and closures on religious  
21 gatherings and places of worship and prohibited religious education and programs for  
22 children and youth in places of worship without equal protection under the law applied  
23 to and/or enforced against similar secular congregating activities of comparator  
24 gatherings such as airports, mass transit, protests, and secular children and youth  
25

1 education, programs and activities;

2 3. All relief of whatever kind available under FRCP 56 and 59 including the right to a speedy  
3 trial and resolution of the claim for declaratory judgment.

4 4. Reasonable attorneys' fees pursuant to 42 U.S.C. § 1988(b) and other applicable law and  
5 statutes;

6 5. Costs incurred herein; and,

7 6. Such other and further relief as the Court deems just and proper.

8  
9 Dated: November 23, 2020

CANNISTRACI LAW FIRM

10 

11 \_\_\_\_\_  
Counsel for Plaintiffs